

3-31-2011

# Indian Springs L.L.C. v. Andersen Clerk's Record v. 2 Dckt. 38369

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**LAW CLERK**

Original - Volume II

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHOINDIAN SPRINGS LLC, an Idaho )  
limited liability company. )Plaintiffs-Counterdefendants- )  
Respondents. )

and )

THOMAS M. HENESH, an )  
Individual. )  
Counterdefendant-Respondent )

vs. )

TERRY and ROSANNA )  
ANDERSEN, husband and wife; )  
EVERETT and MARGIE ELLS, )  
husband and wife; and any and all )  
individuals claiming any possessory )  
interest by or through him. )Plaintiffs-Counterclaimants- )  
Appellants. )

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**Stephen S. Dunn**, District Judge  
Appealed from the District Court of the  
6<sup>th</sup> Judicial District of the State of Idaho.  
in and for **Power County**.

---

**Norm Reece, Esq.**  
Attorney for Appellants**Lane Erickson, Esq.**  
Attorney for Counterdefendant-  
Respondents.

|                                    |  |
|------------------------------------|--|
| <b>FILED</b><br><b>MAR 31 2011</b> | Filed this _____ day of _____, 2011.   |
|                                    | <div style="font-size: 2em; font-weight: bold;">38369</div> <div style="display: flex; justify-content: space-between;"> <span>Clerk</span> <span>Deputy Clerk</span> </div> |

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC,  
An Idaho Limited Liability Company,

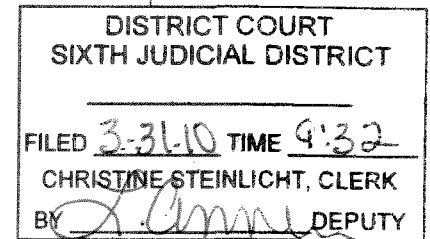
Plaintiffs,

-vs-

TERRY and ROSANNA ANDERSEN,  
Husband and wife; EVERETT AND  
MARGIE ELLS, husband and wife; and  
any and all individuals claiming any  
possessory interest by or through him.  
Defendant.

Case No. CV-2009-066

MEMORANDUM DECISION  
AND ORDER



The above entitled matter came before the Court on Thursday, March 11, 2010, for hearing on Defendant's Motion for a Rule 54(b) Certificate.

Plaintiff was represented by attorney, Lane Erickson, and Defendants appeared pro se.

The Court has carefully reviewed the Motion and the applicable law. The Motion is DENIED for the reasons outlined below.

The history of this case is set forth substantially in the Court's Memorandum Decision and Order, file December 15, 2009 ("Decision"). In summary, the complaint sought eviction of the Defendants from a mobile home on property Plaintiff obtained through a foreclosure action. Defendants filed a counterclaim asserting a continuing right to the mobile home and damages for the loss of personal property. After hearing testimony on the Plaintiff's eviction claim, the Court entered the Decision and concluded that Plaintiff was entitled to possession of the mobile home,

directing Defendants to remove their personal property from the mobile home and an associated storage shed within 120 days of the Decision. Effectively, the Decision was a ruling in favor of the Plaintiff on its Complaint and against the Defendants on any continuing claim they have to the real property in question. However, the claims of the Defendants on their counterclaim are still pending and have not yet been resolved. Thus, less than all the claims raised in this case have been ruled on.

Therefore, the Court emphasizes that its Decision was not and is not a final judgment in this matter. Although the Decision directs the Defendants to turn over the real property to the Plaintiff, the Court is of the opinion that until a final judgment is entered in this case the Plaintiff may only have possession of the real property in question and may not do anything else to that real property, including move or destroy the mobile home, because this case is not yet concluded. A party cannot execute on any decision of the Court until a final judgment is in place.

Defendants have asked the Court for an I.R.C.P. Rule 54(b) Certificate. Plaintiff objects to such a Certificate. This rule provides, in pertinent part: "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim...the court may direct the entry of a final judgment upon one or more but less than all of the claims...only upon an express determination that there is no just reason for delay and upon express direction for the entry of the judgment." The rule also provides that when no express determination of a final judgment has been made then the "decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." The decision to issue a Rule 54(b) Certificate is discretionary with the Court and will be overturned only upon an abuse of discretion. *Bowen v. Heth*, 120 Idaho 452, 816 P.2d 1009 (Ct.App.1991). They are not to be issued routinely and only upon a showing of hardship,

injustice or some other compelling reason. *Id.* “Where there is a claim and a counterclaim asserted by opposing parties, a district court should ordinarily await the determination of both parties' claims before seeking to enter a final judgment in favor of one party on its claim. *Joyce Livestock Co. v. Hulet*, 102 Idaho 129, 627 P.2d 308 (1981).” *Watson v. Weick*, 141 Idaho 500, 505, 112 P.3d 788, 793 (2005).

At the oral argument the Defendants made clear that what they really want is an opportunity to appeal the Decision, which resolves the right of the Plaintiff to ownership and possession of the mobile home and related real property, but also for the Court to not allow the Plaintiff to do anything that would injure that property while that appeal is pending so that if the Idaho Supreme Court were to determine that Defendants still have a viable interest in the mobile home their rights have not been foreclosed by any actions the Plaintiff may take in the meantime. However, while that matter was pending on appeal the practical effect would be that Defendant's counterclaim could not go forward. The Court then would again be faced with another substantial delay in resolving this case.


While there may be some benefit to an appeal resolution of the issue determined by this Court's Decision, it is the Court's view, in the exercise of its discretion, that the better course is to resolve all issues in this case before any appeal is taken. There is no showing of hardship or injustice that any party would suffer while this case is completely resolved. Plaintiff may have physical possession of the property in question and Defendants will be required to remove their personal property from the mobile home and related storage shed, thus eliminating any potential for additional claims of damage to that personal property. From that point there will be no reason for Defendants to be on the property, thus reducing the potential for additional conflict. But Plaintiff is not allowed to do anything to damage or remove the mobile home until a final

judgment is entered. If an appeal is then taken, consideration can be given to an appropriate stay and security for that stay. This maintains the status quo until all issues in this case are resolved. Therefore, Defendants Motion for a Rule 54(b) Certificate is DENIED.

Defendants are to remove their items of personal property as soon as weather permits, or not later than April 15, 2010, unless otherwise ordered by this Court. Mr. Henesh is not to be present when Defendants remove their personal property, but counsel for Mr. Henesh is to be present and a video and written record of the personal property that is present and what is taken by Defendants is to be made. If a deputy sheriff is needed to keep the peace the parties can request that. If there are any disputes over ownership of any item of personal property, each item of personal property in dispute is to be left in the storage shed and a video and written record of such dispute made for presentation to the Court, as necessary

IT IS SO ORDERED.

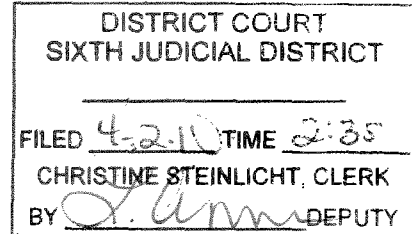
DATED this 31 day of March 2010.

  
STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Terry and Rosanna Andersen  
Everett and Margie Ells

Terry and Rosanna Andersen  
 775 Yellowstone, #121  
 Pocatello, ID 83201  
 (208) 233-1020  
*Pro Se*

Everett and Margie Ells  
 489 Packard Ave.  
 Pocatello, ID 83201  
 (208)232-6640  
*Pro Se*



**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER**

INDIAN SPRINGS, LLC, an Idaho limited liability company )  
 )  
 )

Plaintiff )  
 )  
 )

vs. )  
 )  
 )

TERRY & ROSANNA ANDERSON, )  
 husband and wife; EVERETT & )  
 MARJORIE ELLS, husband and wife; and )  
 any and all individuals claiming any )  
 possessory interest by or through them; )  
 )

Defendants. )  
 )

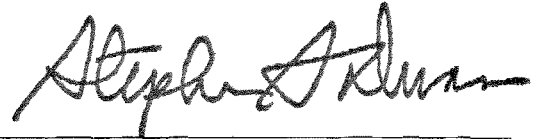
**CV 2009 - 66**

**ORDER SHORTENING TIME**

Upon review of Defendant's Motion for Shortening Time in which to argue Defendants' Motion for Enlargement of Time to Comply with Court Order, and good cause appearing therefore,

IT IS HEREBY ORDERED, that the hearing of Defendants' Motion for Enlargement of Time to Comply with Court Order be shortened, and that said hearing be held on the 8<sup>th</sup> day of April, 2010 at 2:15 pm.

DATED this 2nd day of April, 2010.



HON. STEPHEN S. DUNN  
District Judge

CLERK'S CERTIFICATE OF SERVICE

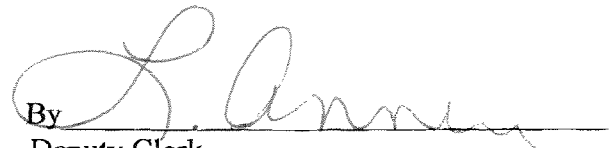
I hereby certify that I am a duly certified Clerk of the Court and that on this 2nd day of April, 2010, I served a true and correct copy of the foregoing ORDER SHORTENING TIME, by depositing same in United States mail, postage pre-paid, in an envelope addressed to:

Terry & Rosanna Anderesen  
775 Yellowstone, #121  
Pocatello, ID 83201

Everett and Margie Ells  
489 Packard Ave.  
Pocatello, ID 83201

Lane Erickson, Esq.  
Atty. for Plaintiff  
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.  
P.O. Box 1391  
Pocatello, ID 83204-1391

  
Clerk

  
By  
Deputy Clerk



IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC,  
An Idaho Limited Liability Company,

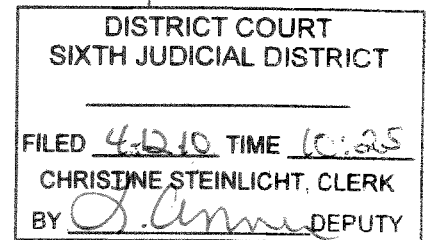
Plaintiffs,

-vs-

TERRY and ROSANNA ANDERSEN.  
Husband and wife; EVERETT AND  
MARGIE ELLS, husband and wife; and  
any and all individuals claiming any  
possessory interest by or through him.  
Defendant.

Case No. CV-2009-066

MINUTE ENTRY AND ORDER



The above entitled matter came before the Court on Thursday, April 8, 2010, for hearing on Defendant's Motion for a Enlargement of Time to Comply with Court Order.

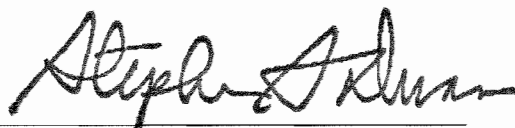
Plaintiff was represented by attorney, Lane Erickson, and Defendants, Terry and Rosanna Andersen, appeared pro se.

The Court heard Defendant's argument and objection from Plaintiff as well. After considering the same;

IT IS HEREBY ORDERED that Defendants shall have until June 15, 2010, to remove their personal property from the shed and the mobile home. Further, the parties shall remove those items on a Monday through Thursday.

IT IS SO ORDERED.

DATED this 8<sup>th</sup> day of April, 2010.

A handwritten signature in black ink, appearing to read "Stephen S. Dunn". The signature is fluid and cursive, with the first name "Stephen" and last name "Dunn" clearly distinguishable.

STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Terry and Rosanna Andersen  
Everett and Margie Ells

MAY 24 2010

FILED \_\_\_\_\_ TIME 2:51 pm  
CHRISTINE STEINWACHT, CLERK  
DEPUTY

Terry and Rosanna Andersen  
775 Yellowstone, #121  
Pocatello, ID 83201  
(208) 233-1020  
*Pro Se*

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER**

INDIAN SPRINGS, LLC, an Idaho limited )  
liability company )

Plaintiff )

vs. )

TERRY & ROSANNA ANDERSON, )  
husband and wife; EVERETT & )  
MARJORIE ELLS, husband and wife; and )  
any and all individuals claiming any )  
possessory interest by or through them; )

Defendants. )

**CV 2009 - 66**

**MOTION FOR RECONSIDERATION**

COME NOW Terry and Rosanna Andersen, pursuant to IRCP 11 (b) and move the court for reconsideration of Memorandum, Decision and Orders of March 31, 2010 and December 15, 2009 on the following grounds:

1. March 25, 1996, Merritt Thornhill committed to selling the modular home to Terry Andersen separate of the land (Exhibit A)
2. Contractual Real Estate Purchase Agreement dated April 24, 1996 completed that agreement. (Exhibit B)

3. The home is believed to have been the personal property of M.K. “Buster” Thornhill. (Father of D.M. or Merritt Thornhill - Seller) (Exhibits C & D).
4. The home was attached to the parcel of land on which it sits at the time of purchase. That did not change.
5. Taxes have been paid on the home by the defendants for 14 years. (Part of the record)
6. The home alone would be considered “personal property”.
7. The issue of personal property is part of the case that is unresolved.
8. Personal property remaining in the home as “personal property” is not unreasonable.
9. Merritt Thornhill (seller) agreed to sell 192 acres of land to Terry Andersen (Exhibits E & F).
10. Civil engineers have identified approximately 177 acres in the legal description. (Part of the record).
11. McKinney’s failed attempt to auction off the land (they were not in chain of title) claimed there were 182 acres. Interested buyers understood the parcel with the home was not included in the sale.
12. The original deeds were grossly in error.
13. As repeatedly confirmed by the honorable Judge Ronald Bush, the buyer was a company (Recreational Properties A&B, a partnership).
14. A company cannot sign anything. Representatives of or for that company must sign for it.
15. The deeds erroneously transferred the property to the signers for the company, not the company.
16. Only one member of the company, which was an LLC was acknowledged, not as the grantee, but in the headers and footers.
17. The property description used in subsequent documents added the parcel land shown on the

Corporate Warranty Deed to the end of the legal description. Exhibits G, H, & I)

18. This is the same parcel shown on a deed of reconveyance to the corporation, Indian Springs Natatorium. (Exhibit J)

19. Said parcel of land refers to the parcel on which the pool and picnic area sits.

20. It is believed the property belonged not to Merritt Thornhill, but to his mother, Josephine Thornhill. (Exhibits B & C).

THEREFORE, is it inconcievable that the gross errors found through changes in the closing papers including, but not limited to the deeds could also be found in the property description prepared by the same attorney (Exhibits K, L, M & N)


Defendants therefore move the court to allow the home, which is at least personal property on land in question, complete with contents to remain in place until all issues are resolved, including Defendants' appeal on rule 54(b) decision.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE that on Thursday, the 10<sup>th</sup> day of June, 2010, at 2:30 pm of said day, or as soon thereafter as counsel can be heard, in the Courtroom of said Court, Power County Courthouse, American Falls, County of Power, State of Idaho, the undersigned will call up for hearing before the Court Defendants' Motion for Reconsideration.

Respectfully submitted this 24<sup>th</sup> Day of May, 2010

  
Terry Andersen

  
Rosanna Andersen

CERTIFICATE OF SERVICE

We hereby certify that on this 24<sup>th</sup> day of May, 2010, we served a true and correct copy of the foregoing MOTION FOR RECONSIDERATION, by depositing the same in the United States mail, at Pocatello, postage pre-paid, in an envelope addressed to:

Lane V. Erickson, Esq.  
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.  
P.O. Box 1391  
Pocatello, ID 83204-1391

  
TERRY ANDERSEN

  
ROSANNA ANDERSEN

Terry Andersen  
Andersen Inv. Mgt. Co.  
Fax (303) 427-4650

3/25/96

Terry:

After going over your proposal with my friend who is a commercial realtor, this is what he feels would be in both parties best interest. Also, my accountant tells me that in his opinion I have to pay tax on the Modular Home anyway so it would be cleaner to just buy with no transfer of property.

Herbitt

Exhibit A

Addendum #     / Counter Offer # 2 to offer #2  
to  
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM/COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of April 19, 1996, including all addends and counter notes between TERRY ANDERSEN, TRUSTEE, as BUYER, and MERRIT THORNHILL, as SELLER. The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same.

1. Earnest money to be \$10,000.00 and considered part of the down payment - *May 2, 1996. Buyer to give Seller \$10,000 earnest money check made out to Metro National Escrow Account/Merritt Thornhill. Earnest money becomes nonrefundable at that time. TWJ*
2. Total down payment to be \$100,000 at closing which includes Earnest Money Deposit. Total price to be \$750,000.00.
3. Seller financing to be secured by First Trust Deed payments to be at 0% interest for *20 TWJ* years as per conversation on April 17, 1996. Payments to be approximately \$4,000 per month, beginning Aug 1, 1996, and accelerating as in the attached payment schedule.
4. Closing to be June 30, 1996 - general warranty deed. The balance of the down payment will be due at closing. If any parcels of land are sold by the BUYER while the contract is in force, the total revenue from the sale will be given to Merritt Thornhill and will be applied to the payment schedule of the outstanding contract. *Such sale will be done with prior approval by SELLER. TWJ*
6. Any further offer, addendum, counter offer to be signed by Terry Andersen.
7. From the period of May 1 to June 30, 1996, BUYER learns business and functions as the Assistant Manager, with the SELLER functioning as Manager of the present operations.
8. From the period of July 1 to August 31, 1996, BUYER assumes position as Manager and owner of the present operations, and SELLER is free to move personal items and antiques from the property. These properties must be removed by August 31, 1996.
9. All moneys received will be accounted for through a computerized cash register system which will be of the BUYER's choosing, and purchased on a lease basis.
10. All receipts during the period of May 1 to June 30, 1996 will be received by the SELLER into his own account. Exception to this is made on all reservation deposits for reservations dated after June 30, 1996.
11. SELLER agrees to release the building referred to as the "3-Bedroom Modular Home" to the SELLER after acceptance of the Earnest Money agreement. This release applies to the building only, and not personal effects therein, nor to any land on which the building rests.

☐ SELLER ☐ BUYER shall have until 5:00 pm Mountain Time, April 25, 1996 to accept these terms in accordance with Section 23 of the REPC. *Unless so accepted, this offer shall lapse.*

*Terry Andersen*  
☒ BUYER ☐ SELLER Signature

*4/24/96*  
Date

*Merritt Thornhill*  
☐ BUYER ☒ SELLER Signature

*4/24/96*  
Date

CHECK ONE:

☒ Acceptance ☐ SELLER ☒ BUYER hereby accepts these terms.

*Terry Andersen*  
☒ BUYER ☐ SELLER Signature

*4/24/96*  
Date

*Merritt Thornhill*  
☐ BUYER ☒ SELLER Signature

*4/24/96*  
Date

☐ Rejection ☐ SELLER ☐ BUYER rejects these terms.

\_\_\_\_\_(Initials) \_\_\_\_\_(Date) \_\_\_\_\_(Time)

☐ Counter Offer: ☐ SELLER ☐ BUYER presents as a counter offer the terms set forth on the Attached Counter Offer # \_\_\_\_\_

Seller's Initials [     ] Date: \_\_\_\_\_ Buyer's Initials [     ] Date: \_\_\_\_\_

Exhibit B



COURTHOUSE  
543 BANNOCK  
AMERICAN FALLS, ID 83211  
FORWARD & ADDRESS CORRECTION

PARCEL NO. H 20430-01 A  
PAGE 1 OF 1  
TAX CODE 3-00  
LOTS/ACRES MARKET VALUE

CATEGORY DESCRIPTION  
16 MANUFACTURED HS  
17 IMP TO MAN HSG  
LESS HOMEOWNER EXEMPTION

13,700  
609  
7,155  
7,154\*

1996  
TAXPAYER'S  
VALUATION

ASSESSMENT NOTICE  
TAXES ARE BASED ON THE VALUATION  
LISTED ON THIS STATEMENT

IF THERE ARE ANY QUESTIONS  
REGARDING THIS STATEMENT  
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JULY 8, 1996

See the reverse side for further references  
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS 3251 S INDIAN SPRINGS R 83211

PREVIOUS NUMBER

Mail To:

1973 VAN DYKE 24X56

THORNHILL M. K. ET-UX

3251 INDIAN SPRINGS ROAD  
AMERICAN FALLS ID 83211

DOUGLAS GLASCOCK  
POWER COUNTY ASSESSOR  
COURTHOUSE  
543 BANNOCK  
AMERICAN FALLS, ID 83211  
FORWARD & ADDRESS CORRECTION

IMPORTANT NOTICE-PLEASE READ

PARCEL NO. RP 01332-01 A  
PAGE 1 OF 1  
TAX CODE 3-00  
LOTS/ACRES MARKET VALUE

CATEGORY DESCRIPTION  
18 OTHER LAND

4.070 AC 4,230  
4.070 4,230\*

1996  
TAXPAYER'S  
VALUATION

ASSESSMENT NOTICE  
TAXES ARE BASED ON THE VALUATION  
LISTED ON THIS STATEMENT

IF THERE ARE ANY QUESTIONS  
REGARDING THIS STATEMENT  
NOTIFY THE ASSESSOR'S OFFICE BEFORE

JULY 8, 1996

See the reverse side for further references  
KEEP THIS COPY FOR YOUR RECORDS

PROPERTY ADDRESS

PREVIOUS NUMBER

518 TSS 231E  
1-78

Mail To:

THORNHILL JOSEPHINE AMANDA

3251 INDIAN SPRINGS RD.  
AMERICAN FALLS ID 83211

Exhibit C

PARCEL NO: RPD1332-01

\* T A X R E M I N D E R \*

POWER COUNTY TAX COLLECTOR  
COURTHOUSE 543 BANNOCK  
AMERICAN FALLS  
IDAHO 83211

| YEAR | BILLS | TAX   | PENALTY | INTEREST | COST | TOTAL |
|------|-------|-------|---------|----------|------|-------|
| 95   | 3843  | 28.12 | .55     | 2.16     |      | 30.84 |

DATE PRINTED: 7/25/96

 =====  
 TOTAL DUE: 30.84 VALID THROUGH: 8/16/96  
 =====
LEVY SHEETS ARE AVAILABLE IN TREASURER'S OFFICE  
RECEIPT GIVEN SUBJECT TO CLEARANCE OF YOUR CHECKTHORNHILL JOSEPHINE AMANDA  
3251 INDIAN SPRINGS RD  
AMERICAN FALLS ID 83211S13 T8S R31E  
T-78

PARCEL NO: MH20430-01

A

\* T A X R E M I N D E R \*

POWER COUNTY TAX COLLECTOR  
COURTHOUSE 543 BANNOCK  
AMERICAN FALLS  
IDAHO 83211

| YEAR | BILLS | TAX   | PENALTY | INTEREST | COST | TOTAL |
|------|-------|-------|---------|----------|------|-------|
| 95   | 502   | 77.57 | 1.55    | 5.96     |      | 85.08 |

DATE PRINTED: 7/25/96

 =====  
 TOTAL DUE: 85.08 VALID THROUGH: 8/16/96  
 =====
LEVY SHEETS ARE AVAILABLE IN TREASURER'S OFFICE  
RECEIPT GIVEN SUBJECT TO CLEARANCE OF YOUR CHECKTHORNHILL M K ET-UX  
3251 INDIAN SPRINGS ROAD  
AMERICAN FALLS ID 832116  
1973 VAN DYKE 24X56

NOTE: A WARRANT OF DISTRAINT WILL BE ISSUED 8/16/1996 ON DELINQUENCIES

Exhibit D

COMMERCIAL - INDUSTRIAL - INVESTMENT

REAL ESTATE PURCHASE CONTRACT

---

The BUYER, Terry Andersen, Trustee, offers to purchase the **Property** described below from Merit Thornhill, SELLER.

---

OFFER TO PURCHASE

- 1. PROPERTY:** 4 acres located adjacent to the Rockland Highway commonly known as "Indian Springs Swimming & RV Park", and 188 acres surrounding the park, including all buildings, attachments, appendages, and all rights, inventories, and existing agreements pertaining to the existing businesses conducted on the property. The property will also include any tractors and special equipment and tools used in the production of income, as well as the fish and other livestock which are sustained on the property.

For legal description see preliminary title report when available as provided below.

1.1 Included Items. Unless excluded herein, this sale shall include all fixtures presently attached to the **Property**. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: NONE.

1.2 Excluded Items. These items are excluded from this sale: All personal property and antiques.

received by on (C) phone number

(if Title/Escrow Company) for deposit no later than (date)

/X/ To be deposited upon acceptance by both Seller &  
Buyer

## OFFER TO PURCHASE

- 1. PROPERTY:** 192 acres located adjacent to the Rockland Highway commonly known as "Indian Springs Swimming & RV Park", including all buildings, attachments, appendages, and all rights, inventories, and existing agreements pertaining to the existing businesses conducted on the property. The property will also include any special equipment and tools used in the production of income, as well as the fish and other livestock which are sustained on the property.

For legal description, see:

/ attached addendum # \*.

/X/ preliminary title report when available as provided below.

**1.1 Included Items.** Unless excluded herein, this sale shall include all fixtures presently attached to the **Property**. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: None.

**1.2 Excluded Items.** These items are excluded from this sale: All personal property and antiques.

- 2. PURCHASE PRICE AND FINANCING.** Buyer agrees to pay for the **Property** as follows:

\$10,000.00 Earnest Money Deposit

\$0.00 Loan Proceeds:

Exhibit F

## CORPORATE WARRANTY DEED

For Value Received **INDIAN SPRINGS NATATORIUM, INC.** an Idaho corporation, the grantor, does hereby grant, bargain, sell and convey unto **TERRY W. ANDERSEN** Trustee of Andersen Living Trust and **JOHN K. BAKER** and **JULE BAKER**, Husband & Wife, 1717 Jean, Poca, Idaho, the grantees, the following described premises, in Power County Idaho, to-wit:

A parcel of land in the Southeast Quarter of Section 18, Township 8 South, Range 31 E.B.M., described as follows:

Beginning at the Southeast corner of said recreational area that bears North 31 49' West 2,247.1 feet more or less, from the Southeast corner of said Section 18, Thence North 0 05' East 188.0 feet; Thence North 33 04' East 214.7 feet; Thence South 89 55' West 377.7 feet; Thence South 4 57' West 342.2 feet; Thence South 84 47' East 291.0 feet to the point of beginning.

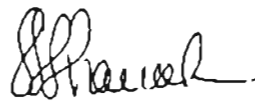
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances and that it will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantor, pursuant to a resolution of its Board of Directors, has caused its corporate name to be hereunto subscribed by its president and its Secretary/Treasurer and its corporate seal to be affixed by its Secretary/Treasurer the date set forth herein.

DATED: This 2nd day of July, 1996.



D. M. Thornhill, President



Jamie Shanahan, Secy/treas



CORPORATE WARRANTY DEED - INDIAN SPRINGS NATATORIUM  
9506-2CHRNHILC.WRD

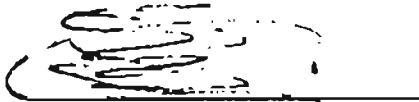
EXHIBIT B

Exhibit B

STATE OF IDAHO, COUNTY OF POWER SS

On this 1st day of July, 1996, before me, a notary public in and for said State, personally appeared D. M. Thornhill and Jamie Shanshan, known to me to be the President and Secretary/Treasurer of the corporation that executed this instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Notary Public  
Residing at Am. Falls, ID  
My Comm. Expires 4/18/98



165834

|                  |                |
|------------------|----------------|
| Doc. #           | 8              |
| Doc. #           | 2:10 PM        |
| Doc. #           | Alliance Title |
| JUL -5 1996      |                |
| Maurice Schelste |                |

CORPORATE WARRANTY DEED - INDIAN SPRINGS NATATORIUM  
9506-2THRNLHC.WRD

EXHIBIT B

5835

COPY

2-6192DD  
JUL 2 11 PM  
Alliance Title

JUL -5 1996

Maurice Schelke  
JUL 9 1996

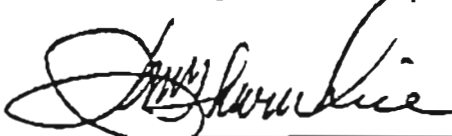
## WARRANTY DEED

For Value Received **DONALD M. THORNHILL**, aka D. M. Thornhill and **SHIRLEY THORNHILL**, husband and wife, the grantor, does hereby grant, bargain, sell and convey unto **TERRY W. ANDERSEN** Trustee of Andersen Living Trust, and **JOHN K. BAKER** and **JULIE A. BAKER**, Husband and Wife whose current address is 1717 Jean Street, Pocatello, ID 83201, the grantee, the following described premises, in Power County Idaho, to-wit:

(see attached)

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owner in fee simple of said premises; that they are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: July 2, 1996



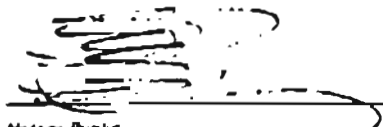
D. M. THORNHILL



SHIRLEY THORNHILL

STATE OF IDAHO, COUNTY OF POWER SS

On this 2nd day of July, 1996, before me, a notary public in and for said State, personally appeared **DONALD M. THORNHILL** aka D. M. THORNHILL, and **SHIRLEY THORNHILL**, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Notary Public

Residing at American Falls, Idaho

Comm. Expires 4-19-98



WARRANTY DEED - THORNHILL TO RECREATIONAL PROPERTIES A&B L.L.C.  
9602-2THRNHILL.DED

Exhibit H

EXHIBIT H

ATTACHED LEGAL DESCRIPTION  
THORNHILL TO RECREATIONAL PROPERTIES A & B L.L.C.

PARCEL 1:

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., POWER COUNTY, IDAHO, LESS RIGHT OF WAY.

EXCEPTING THEREFROM: A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY SIDE OF COLD CREEK ROAD AND THE SOUTH LINE OF THE SE $\frac{1}{4}$  SE $\frac{1}{4}$  FROM WHICH THE CORNER OF SAID SECTION 18 BEARS SOUTH 89°53' EAST, 25.00 FEET; THENCE NORTH 89°53' WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, 604.70 FEET; THENCE NORTH 43°00' WEST, 70.60 FEET; THENCE NORTH 15°49' WEST 144.39 FEET; THENCE NORTH 65°28' WEST, 49.62 FEET; THENCE NORTH 35°28' EAST, 450.48 FEET TO THE SOUTHWESTERLY SIDE OF AN EXISTING COUNTY ROAD; THENCE SOUTH 57°45' EAST, ALONG THE SIDE OF SAID COUNTY ROAD, 120.00 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 18°55' FOR AN ARC LENGTH OF 148.57 FEET; THENCE SOUTH 38°50' EAST, 332.96 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 38°20' FOR AN ARC LENGTH OF 167.26; THENCE SOUTH 0°30' EAST, 2.90 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM: BEGINNING AT A POINT ON THE SOUTH LINE OF AND NEAR THE SOUTHEAST CORNER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., BY A POWER POLE ON THE WESTERLY LINE OF A COUNTY ROAD; THENCE WESTERLY 604.0 FEET TO THE EASTERLY LINE OF AN EXISTING NATURAL DRAINAGE CREEK, COMMONLY KNOWN AS COLD CREEK, ON THE SECTION LINE AND MARKED WITH A 1 $\frac{1}{2}$ " X 3 $\frac{1}{4}$ " IRON PIN DRIVEN 2 $\frac{1}{2}$  FEET INTO THE GROUND; THENCE NORTH 27°32' WEST 236.0 FEET TO A STEEL FENCE POST ON THE NORTHEASTERLY BANK AND CURVE TO THE LEFT OF SAME CREEK; THENCE ON A CURVE TO THE RIGHT OF WITH A RADIUS EQUAL TO 51 FEET, AND DELTA ANGLE EQUAL TO 64°00' AND LENGTH OF 56.8 FEET; THENCE NORTH 36°28' EAST 391.0 FEET, MORE OR LESS, TO A SECOND POINT ON THE SOUTHWESTERLY BOUNDARY LINE OF SAID COUNTY ROAD; THENCE SOUTH 57°00' EAST 120.0 FEET TO A THIRD POINT ON THE ROAD LINE; THENCE ALONG THIS ROAD LINE A CURVE TO THE RIGHT WITH A RADIUS OF 910.0 FEET, CHORD 635 FEET AND A LENGTH OF CURVE OF 648.0 FEET, BOTH MORE OR LESS, TO PLACE OF BEGINNING.  
ALL IN THE SOUTHEASTERLY PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M.

EXCEPTING THEREFROM: COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY #37, WHICH POINT IS ONE-QUARTER MILE NORTH OF THE SOUTHERLY



3-3

SECTION LINE OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., AND WHICH POINT IS ALSO 50' EAST OF THE CENTERLINE OF SAID HIGHWAY AND 67.0 FEET EAST OF THE NORTH-SOUTH CENTER QUARTER SECTION LINE OF SAID SECTION; THENCE SOUTH 85°30' EAST 1182.0 FEET TO A POINT, WHICH POINT IS ON THE SOUTHWESTERLY SHOULDER OF AN EXISTING COUNTY ROAD; AND NORTH 77°25' WEST, 83.2 FEET OF THE SOUTHEAST CORNER OF AN EXISTING CONCRETE BRIDGE WHICH CROSSES SAID ROAD; THENCE SOUTH 44°38' EAST 332.0 FEET TO ANOTHER POINT ON THE AFORESAID ROADWAY, THE TRUE POINT OF BEGINNING; THENCE SOUTH 46°15' EAST 112.5 FEET; THENCE SOUTH 57°47' EAST 261.0 FEET; THENCE SOUTH 32°13' WEST 362.0 FEET TO A POINT ON THE NORTHEASTERLY BANK OF AN EXISTING NATURAL DRAINAGE CREEK; THENCE NORTH 57°47' WEST 24.0 FEET TO A POINT; THENCE NORTH 12°47' WEST 127.26 FEET; THENCE NORTH 57°47' WEST 147.0 FEET; THENCE NORTH 32°13' EAST 148.0 FEET; THENCE NORTH 17°47' WEST 168.0 FEET; THENCE NORTH 58°14' EAST 42.5 FEET TO THE PLACE OF BEGINNING.

ALL IN THE SE¼ SE¼ OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M.

EXCEPTING THEREFROM: A PARCEL OF LAND IN THE SE¼ SE¼ OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTH 89°53' WEST, ALONG THE SOUTH LINE OF SAID SECTION, 25.00 FEET TO THE WEST LINE OF AN EXISTING COUNTY ROAD (COLD CREEK ROAD); THENCE NORTH 0°30' EAST, ALONG SAID ROAD 2.90 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 38°20' FOR AN ARC LENGTH OF 167.26 FEET; THENCE NORTH 38°50' WEST, 332.96 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 18°55', FOR AN ARC LENGTH OF 148.57 FEET; THENCE NORTH 57°45' WEST, 120.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING THE SIDE OF SAID COUNTY ROAD, SOUTH 35°28' WEST, 450.48 FEET; THENCE NORTH 65°28' WEST, 24.95 FEET; THENCE NORTH 35°42' WEST, 83.73 FEET; THENCE NORTH 61°20' WEST, 117.19 FEET; THENCE NORTH 76°13' WEST, 68.13 FEET; THENCE NORTH 26°47' WEST, 63.38 FEET; THENCE NORTH 13°13' EAST, 56.92 FEET; THENCE NORTH 57°10' WEST, 43.21 FEET; THENCE NORTH 31°40' EAST, 362.00 FEET TO THE SOUTHERLY SIDE OF SAID COUNTY ROAD; THENCE SOUTH 57°59' EAST 429.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, POWER COUNTY, IDAHO, BEING A PORTION OF THAT CERTAIN REAL PROPERTY CONVEYED TO M.K. THORNHILL AND JOSEPHINE THORNHILL, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID RECREATIONAL AREA THAT BEARS NORTH 31°49' WEST 2247.1 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID SECTION 18, THENCE NORTH 0°05' EAST 138.0 FEET, THENCE NORTH 33°04' EAST 214.7 FEET, THENCE SOUTH 89°55' WEST 377.7 FEET, THENCE SOUTH 4°57' WEST 342.2 FEET, THENCE SOUTH 84°47' EAST 291.0 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT: ANY PROPERTY LYING WEST OF HIGHWAY 37, IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST BOISE MERIDIAN, POWER COUNTY, IDAHO.

**PARCEL 1:**

**THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., POWER COUNTY, IDAHO, LESS RIGHT OF WAY.**

**EXCEPTING THEREFROM: A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE INTERSECTION OF THE WESTERLY SIDE OF COLD CREEK ROAD AND THE SOUTH LINE OF THE SE $\frac{1}{4}$  SE $\frac{1}{4}$  FROM WHICH THE CORNER OF SAID SECTION 18 BEARS SOUTH 89°53' EAST, 25.00 FEET; THENCE NORTH 89°53' WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, 604.70 FEET; THENCE NORTH 43°00' WEST, 70.60 FEET; THENCE NORTH 15°49' WEST 144.39 FEET; THENCE NORTH 65°28' WEST, 49.62 FEET; THENCE NORTH 35°28' EAST, 450.48 FEET TO THE SOUTHWESTERLY SIDE OF AN EXISTING COUNTY ROAD; THENCE SOUTH 57°45' EAST, ALONG THE SIDE OF SAID COUNTY ROAD, 120.00 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 18°55' FOR AN ARC LENGTH OF 148.57 FEET; THENCE SOUTH 38°50' EAST, 332.96 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 38°20' FOR AN ARC LENGTH OF 167.26; THENCE SOUTH 0°30' EAST, 2.90 FEET TO THE POINT OF BEGINNING.**

**EXCEPTING THEREFROM: BEGINNING AT A POINT ON THE SOUTH LINE OF AND NEAR THE SOUTHEAST CORNER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., BY A POWER POLE ON THE WESTERLY LINE OF A COUNTY ROAD; THENCE WESTERLY 604.0 FEET TO THE EASTERLY LINE OF AN EXISTING NATURAL DRAINAGE CREEK, COMMONLY KNOWN AS COLD CREEK, ON THE SECTION LINE AND MARKED WITH A 1½" X ¾" IRON PIN DRIVEN 2½ FEET INTO THE GROUND; THENCE NORTH 27°32' WEST 236.0 FEET TO A STEEL FENCE POST ON THE NORTHEASTERLY BANK AND CURVE TO THE LEFT OF SAME CREEK; THENCE ON A CURVE TO THE RIGHT OF WITH A RADIUS EQUAL TO 51 FEET, AND DELTA ANGLE EQUAL TO 64°00' AND LENGTH OF 56.8 FEET; THENCE NORTH 36°28' EAST 391.0 FEET, MORE OR LESS, TO A SECOND POINT ON THE SOUTHWESTERLY BOUNDARY LINE OF SAID COUNTY ROAD; THENCE SOUTH 57°00' EAST 120.0 FEET TO A THIRD POINT ON THE ROAD LINE; THENCE ALONG THIS ROAD LINE A CURVE TO THE RIGHT WITH A RADIUS OF 910.0 FEET, CHORD 635 FEET AND A LENGTH OF CURVE OF 648.0 FEET, BOTH MORE OR LESS, TO PLACE OF BEGINNING.**  
**ALL IN THE SOUTHEASTERLY PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M.**

**EXCEPTING THEREFROM: COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY #37, WHICH POINT IS ONE-QUARTER MILE NORTH OF THE SOUTHERLY**

*Exhibit I*

SECTION LINE OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., AND WHICH POINT IS ALSO 50' EAST OF THE CENTERLINE OF SAID HIGHWAY AND 67.0 FEET EAST OF THE NORTH-SOUTH CENTER QUARTER SECTION LINE OF SAID SECTION; THENCE SOUTH 85°30' EAST 1182.0 FEET TO A POINT, WHICH POINT IS ON THE SOUTHWESTERLY SHOULDER OF AN EXISTING COUNTY ROAD; AND NORTH 77°25' WEST, 83.2 FEET OF THE SOUTHEAST CORNER OF AN EXISTING CONCRETE BRIDGE WHICH CROSSES SAID ROAD; THENCE SOUTH 44°38' EAST 332.0 FEET TO ANOTHER POINT ON THE AFORESAID ROADWAY, THE TRUE POINT OF BEGINNING; THENCE SOUTH 46°15' EAST 112.5 FEET; THENCE SOUTH 57°47' EAST 261.0 FEET; THENCE SOUTH 32°13' WEST 362.0 FEET TO A POINT ON THE NORTHEASTERLY BANK OF AN EXISTING NATURAL DRAINAGE CREEK; THENCE NORTH 57°47' WEST 24.0 FEET TO A POINT; THENCE NORTH 12°47' WEST 127.26 FEET; THENCE NORTH 57°47' WEST 147.0 FEET; THENCE NORTH 32°13' EAST 148.0 FEET; THENCE NORTH 17°47' WEST 168.0 FEET; THENCE NORTH 58°14' EAST 42.5 FEET TO THE PLACE OF BEGINNING.

ALL IN THE SE¼ SE¼ OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M.

EXCEPTING THEREFROM: A PARCEL OF LAND IN THE SE¼ SE¼ OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTH 89°53' WEST, ALONG THE SOUTH LINE OF SAID SECTION, 25.00 FEET TO THE WEST LINE OF AN EXISTING COUNTY ROAD (COLD CREEK ROAD); THENCE NORTH 0°30' EAST, ALONG SAID ROAD 2.90 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 38°20' FOR AN ARC LENGTH OF 167.26 FEET; THENCE NORTH 38°50' WEST, 332.96 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 18°55', FOR AN ARC LENGTH OF 148.57 FEET; THENCE NORTH 57°45' WEST, 120.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING THE SIDE OF SAID COUNTY ROAD, SOUTH 35°28' WEST, 450.48 FEET; THENCE NORTH 65°28' WEST, 24.95 FEET; THENCE NORTH 35°42' WEST, 83.73 FEET; THENCE NORTH 61°20' WEST, 117.19 FEET; THENCE NORTH 76°13' WEST, 68.13 FEET; THENCE NORTH 26°47' WEST, 63.38 FEET; THENCE NORTH 13°13' EAST, 56.92 FEET; THENCE NORTH 57°10' WEST, 43.21 FEET; THENCE NORTH 31°40' EAST, 362.00 FEET TO THE SOUTHERLY SIDE OF SAID COUNTY ROAD; THENCE SOUTH 57°59' EAST, 429.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, POWER COUNTY, IDAHO, BEING A PORTION OF THAT CERTAIN REAL PROPERTY CONVEYED TO M.K. THORNHILL AND JOSEPHINE THORNHILL, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID RECREATIONAL AREA THAT BEARS NORTH 31°49' WEST 2247.1 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID SECTION 18, THENCE NORTH 0°05' EAST 188.0 FEET, THENCE NORTH 33°04' EAST 214.7 FEET, THENCE SOUTH 89°55' WEST 377.7 FEET, THENCE SOUTH 4°57' WEST 342.2 FEET, THENCE SOUTH 84°47' EAST 291.0 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT: ANY PROPERTY LYING WEST OF HIGHWAY 37, IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST BOISE MERIDIAN, POWER COUNTY, IDAHO.

**PARCEL 2**

**A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, POWER COUNTY, IDAHO, BEING A PORTION OF THAT CERTAIN REAL PROPERTY CONVEYED TO M.K. THORNHILL AND JOSEPHINE THORNHILL, AND DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTHEAST CORNER OF SAID RECREATIONAL AREA THAT BEARS NORTH 31°49' WEST 2247.1 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID SECTION 18, THENCE NORTH 0°05' EAST 188.0 FEET, THENCE NORTH 33°04' EAST 214.7 FEET, THENCE SOUTH 89°35' WEST 377.7 FEET, THENCE SOUTH 4°57' WEST 342.1 FEET, THENCE SOUTH 89°47' EAST 291.0 FEET TO THE POINT OF BEGINNING.**



DEED OF RECONVEYANCE

FIRST AMERICAN TITLE COMPANY, INC. as Trustee in the Deed of Trust executed by INDIAN SPRINGS NATATORIUM, INC., recorded March 30, 1994 as Instrument No. 161121 in Drawer No. 8, Mortgage records of POWER County, Idaho, pursuant to the written request of the Beneficiary, does hereby GRANT and RECONVEY unto the PARTIES ENTITLED THERETO,

A parcel of land in the Southeast Quarter of Section 18, Township 8 South, Range 31, E.B.M., POWER COUNTY, IDAHO...

without warranty, all the estate and interest derived to it by or through said Deed of Trust, in the lands therein described.

The corporate name subscribed by it's Assistant Secretary is pursuant to a resolution authorizing the execution of this reconveyance duly adopted by its Board of Directors.

Dated: October 26, 1996

**First American Title Company, Inc.**

By: *Gina Golay*  
GINA GOLAY, Assistant Secretary

STATE OF IDAHO                     )  
COUNTY OF BANNOCK            )

On this 29 day of October, in the year 1996, before me, a Notary Public in and for said State, personally appeared GINA GOLAY, known to me to be the Assistant Secretary of the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*W. D. Peck*  
NOTARY PUBLIC FOR THE STATE OF IDAHO  
Residing in: Pocatello, Idaho  
Commission Expires: 3/15/98  
3/29/2002



166425

|                      |          |
|----------------------|----------|
| 8                    | 12:35 PM |
| First American Title |          |
| Pocatello, Idaho     |          |

*Maurice Schulte*  
3/22

Exhibit J

*Lyle D. Eliassen*

*Attorney At Law*

Fax (208) 226-7079

*Deborah Eliassen*

Associate

202 Idaho Street  
American Falls, Idaho 83211 1236  
(208) 226-5138

July 1, 1996

Kristin Jarrard  
Metro National Title  
111 East Broadway  
Salt Lake City, Utah 84111

Dear Kristin:

I am writing to you concerning the problems with the papers prepared by Metro National Title for the transaction between Terry Andersen, Manager of Recreational Properties A & B and D. M. Thornhill and Indian Springs Natatorium, Inc. here in Idaho.

My reason for writing this letter is two fold:

- 1). To suggest to you that you **NOT** prepare any documents for real estate transactions in Idaho in the future and
- 2) to request reimbursement for the cost of redoing the papers that were prepared.

When I received the first set of documents, I noted the following discrepancies:

1. They were all fixed for Utah notaries
2. You had attempted to use a trust deed to transfer more than 20 acres of real estate, which is not permitted in Idaho
3. You mis-spelled Indian Springs Natatorium
4. You had used the name of AICO Recreational Properties, L.L.C. as the purchaser
5. You had included both the individual sellers and the corporate sellers on the same Warranty Deed.

I called your office and pointed those discrepancies out to you and you assured me that you would redo the papers and return them. You did send a Real Estate Mortgage form partially filled out, but it had appar-

*Exhibit K*

ently been faxed to you and none of the wording on the document other than the items typed in was legible. You had also continued with the name AICO Recreational Properties L.L.C. even though I had called your office and left a message for you to use the name of Recreational Properties A & B, L.L.C. In addition, you did not correct the spelling of Indian Springs Natatorium on any of the other documents and you continued to attempt to use a single Warranty Deed for the individual land corporate transfer of real estate.

When I received those documents at noon on Friday, July 28, there was no way that I could redo all of those documents in time for a 3:00 o'clock closing on that date.

I recognize that part of the problem involved was the fact that you were dealing with property in Idaho, where you were not licensed to operate as a title company. However, many of the rest of the errors just seemed to be a lack of paying attention to what someone was doing, particularly where you knew that the documents were going to be signed in Idaho and you included all Utah notaries, most of which were not filled out with names or any of the other necessary information and you continued to use the name of AICO Recreational Properties, L.L.C. even when you had been advised that the name had changed.

I would strongly recommend that you not prepare any more documents for use in Idaho real estate closings but that you simply refer it to an Idaho title company rather than waste your time and effort and every one else's time in redoing the documents.

I spent the following time redoing the documents:

|         |           |           |               |
|---------|-----------|-----------|---------------|
| June 28 | 4.5 hours | @ \$75.00 | \$337.50      |
| June 29 | 4.5 hours | @ \$75.00 | <u>337.50</u> |
| total   | 9.0 hours |           | \$675.00      |

In addition, my secretary worked 3 1/2 hours of overtime on Saturday to prepare the documents at \$20.00 per hour. I am therefore requesting reimbursement in the amount of \$745.00 for the preparation of the documents.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lyle D. Eliassen", is written over a horizontal line. The signature is somewhat stylized and cursive.

LDE:bjs  
9602-2elijarad.ltr  
cc: Thayer Christensen



*Lyle D. Eliassen*



*Attorney At Law*

Fax (208) 226-7079

202 Idaho Street  
American Falls, Idaho 83211-1236  
(208) 226-5138

*Deborah Eliassen*  
Associate

July 1, 1996

Terry Andersen

By Facsimile transmission to 234-4020

Dear Mr. Andersen:

You are hereby notified on behalf of Merritt Thornhill and Indian Spring Natatorium, Inc. that unless this sales transaction is closed by Noon, Tuesday, July 2, 1996, This transaction will be considered canceled and your earnest money forfeited.

Sincerely,

Lyle D. Eliassen

LDE/ldc  
9602-2Thrnhlcn.not

Date: 26-Jun-96 Time: 01:49 PM

BUYER FINAL CLOSING STATEMENT

COPY

Prepared by  
METRO NATIONAL TITLE  
111 EAST BROADWAY, SUITE 111  
SALT LAKE CITY, UTAH 84111  
(801) 363-6633

Buyer(s)..... RECREATIONAL PROPERTIES A & B, ~~L.L.C., a limited liability company~~  
Seller(s)..... DONALD M. THORNHILL, AKA D.M. THORNHILL, SHIRLEY THORNHILL,  
INDIAN SPRINGS NATORIUM, INC.  
Lender.....  
Property..... INDIAN SPRINGS, SWIMMING & RV PARK, AMERICAN FALLS,  
IDAHO.  
Closing date... 07/01/1996 Proration date: 07/01/1996  
File Number... 500RAN

|  | DEBIT      | CREDIT     |
|--|------------|------------|
| SALES PRICE.....                               | 750,000.00 |            |
| DEPOSITS:                                      |            |            |
| Earnest Money Deposit.....                     |            | 10,000.00  |
| PRORATIONS:                                    |            |            |
| County Taxes.....                              |            | 286.44     |
| from 01/01/96 to 07/01/96 @ \$ 1.57383 per day |            |            |
| Trust Deed/Note to Seller.....                 |            | 650,000.00 |
| ESCROW CHARGES:                                |            |            |
| Settlement or Closing Fee.....                 | 500.00     |            |
| PAYEE...: METRO NATIONAL TITLE                 |            |            |
| TITLE CHARGES:                                 |            |            |
| Attorney's fees - Sign-Up Fee.....             | 150.00     |            |
| PAYEE...: LYLE ELIASON, 202 IDAHO ST.          |            |            |
| RECORDING FEES/TRANSFER CHARGES:               |            |            |
| Recording Fees.....                            | 100.00     |            |
| Deed amount \$50.00 D/T amount \$50.00         |            |            |
| MISCELLANEOUS CHARGES:                         |            |            |
| Federal Express charges.....                   | 30.00      |            |
| PAYEE...: METRO NATIONAL TITLE                 |            |            |
| ..... SUBTOTALS:                               | 750,780.00 | 660,286.44 |
| ..... BALANCE DUE FROM BUYER:                  |            | 90,493.56  |
| ..... TOTALS:                                  | 750,780.00 | 750,780.00 |

My signature hereon acknowledges approval of tax prorations, and signifies my understanding that prorations were based on figures for preceding year, or estimates for current year, and in event of any change for current year, all necessary adjustments must be made between Seller and Purchaser direct; likewise any DEFICIT in delinquent taxes will be reimbursed to Title Company by the Seller. The undersigned further acknowledges the above information was assembled from sources other than this company and therefore, this company cannot guarantee the accuracy thereof. Interest on existing liens is figured to the date indicated and additional interest may have to be collected, if necessary, to secure release from the lienholder. The parties acknowledge that they know of no other charges or liens that have not been considered herein.

We approve the foregoing settlement statement, in its entirety, authorize payment in accordance therewith and acknowledge receipt of a copy thereof.

RECREATIONAL PROPERTIES A & B, ~~L.L.C., a limited liability company~~

BY:

BY:

(Continued on next page)

Page: 1

Exhibit

Buyer Final Closing Statement (continued)  
File Number...: 50

---

METRO NATIONAL TITLE

BY: \_\_\_\_\_ DATED: \_\_\_\_\_  
ESCROW OFFICER

TO: METRO NATI AL TITLE  
111 EAST BROADWAY, SUITE 111  
SALT LAKE CITY, UTAH 84111

COPY

S E L L E R S  
E S C R O W I N S T R U C T I O N S

ESCROW NO.: 500RAN

ESCROW OFFICER: RODNEY A. NEWMAN

DATE: July 2, 1996

PROPERTY ADDRESS: 3249 INDIAN SPRINGS ROAD  
AMERICAN FALLS, IDAHO 83211

BUYER(S): RECREATIONAL PROPERTIES A & B, ~~L.L.C. a limited liability company~~

SELLER(S): DONALD M. THORNHILL aka D.M. THORNHILL and SHERLEY  
THORNHILL and INDIAN SPRINGS NATATORIUM, INC. a  
corporation

AS ESCROW HOLDER I/WE HAND YOU HERewith:

- A. WARRANTY DEED FROM ABOVE NAMED SELLER(S) TO  
THE ABOVE NAMED BUYER(S).
- B. INDEMNITY AND AFFIDAVIT AS TO DEBTS AND LIENS
- C. BILL OF SALE

Covering the land described in the title commitment referenced  
above, which you may deliver and/or record when you have  
collected for the undersigned Seller(s), the sum of  
\$750,000.00 from which you may deduct:

-Balance of existing encumbrances not taken subject to by the  
BUYER(S) herein

Commissions due the Real Estate Agents per the listing and sales  
agreements.

Amounts due and owing to KEY BANK as payoff in full on present  
loan against the subject property.

The Deed of Trust and Note in favor of the Seller herein as  
Beneficiary which Deed of Trust and Note the undersigned has  
read and does hereby approve the terms and conditions contained  
therein.

SELLER(S) AGREE TO THE PAYMENT OF THE FOLLOWING:

**CRAIG R. JORGENSEN**

ATTORNEY AT LAW

P.O. Box 4904  
POCATELLO, IDAHO 83205-4904

155 South 2nd Avenue  
(208) 233-1237  
FAX (208) 233-1435

September 19, 1997

VIA FAX 234-0551

Ron Bitton  
Professional Escrow Services, Inc.  
920 Deon Drive  
Pocatello, ID 83201

Re: John Baker/Todd Andersen/Indian Springs

Dear Ron:

Thanks for your fax of this morning. The overall approach of the documents you have sent to me is different than I think it should be.

The Indian Springs property is now owned by Recreational Properties A&B, a general partnership, with Terry Andersen and John Baker as partners. As I understand it, Baker is selling his partnership interest to Todd and Penny Andersen. The purchase price is set forth in your "Real Estate Purchase and Sale Agreement". Recreational Properties A&B purchased the property from the Thornhills and Indian Springs Natatorium, Inc. The documents I have reviewed would indicate that purchase was made pursuant to a Sales Agreement with a Warranty Deed being deposited with an escrow holder to be delivered to the purchasers upon completion of payment. I have a great dislike of those kind of arrangements. There is nothing that I have in my file at present to indicate that any evidence or notice of that Real Estate Purchase Agreement has been recorded with the Power County Recorder's Office. However, I have not specifically ordered a title report to determine that, but I do have that concern.

It would seem to me that in order to consummate this transaction between John Baker and Todd Andersen, the following would need to be signed by the parties:

1. Baker will need to sign a document transferring and relinquishing his partnership interest in Recreational Properties A&B to Todd Andersen.
2. The Andersens, including Terry and Rosanna, will need to sign the Promissory Note to McKinney.

*Exhibit N*

Ron Bitton  
September 19, 1997  
Page two

3. The Andersens, including Terry and Rosanna, will need to sign a Mortgage (Second) to McKinney securing the Note.
4. If possible, we should get a Release from Thornhill and Indian Springs Natatorium, Inc. (the original sellers), releasing Baker of his obligation under the Sales Agreement/Escrow as discussed above. This would, in effect, release Baker of any future liabilities that might exist on the Thornhill obligation.

You sent me a Warranty Deed from Baker to Todd and Penny Andersen. I'm not sure that is needed inasmuch as Baker's ownership in the property is derivative of his ownership of the partnership. However, it may be that as an additional backup, we would have Baker sign that Warranty Deed to Todd and Penny.

I hope this is helpful to you. I will prepare the Transfer/Assignment of Partnership Interests for the Bakers to sign transferring their interest to Todd and Penny Andersen.

Assuming that the terms are correct in the Promissory Note you have sent me, that Note may suffice.

The Real Estate Mortgage you have sent me securing Andersens' promise to pay McKinney has some problems in it. To begin with, it warrants that the Mortgagors are owners of the premise and that they are free from all encumbrances. That, in fact, is not the case. Assuming my client authorizes me to do so, I would like to prepare a Mortgage I believe more completely addresses the situation.

After you have had an opportunity to look this over, give me a call.

Thank you very much.

Sincerely yours,



CRAIG R. JORGENSEN

CRJ/jj

cc: Terry and Rosanna Andersen

Terry and Rosanna Andersen  
775 Yellowstone, #121  
Pocatello, ID 83201  
(208) 233-1020  
*Pro Se*

Everett and Margie Ells  
489 Packard Ave.  
Pocatello, ID 83201  
(208)232-6640  
*Pro Se*

|   |                  |
|---|------------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |                  |
| FILED <u>6-10-09</u>                      | TIME <u>2:20</u> |
| CHRISTINE STEINLICHT, CLERK               |                  |
| BY <u>[Signature]</u>                     | DEPUTY           |

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER**

INDIAN SPRINGS, LLC, an Idaho limited )  
liability company )

Plaintiff )

vs. )

TERRY & ROSANNA ANDERSON, )  
husband and wife; EVERETT & )  
MARJORIE ELLS, husband and wife; and )  
any and all individuals claiming any )  
possessory interest by or through them; )

Defendants. )

**CV 2009 - 66**

**AFFIDAVIT OF TERRY ANDERSEN**

**IN SUPPORT OF DOCUMENTS**

**SUBMITTED IN EVIDENCE**

STATE OF IDAHO )  
 )  
County of Bannock )

Terry Andersen, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years and am competent to testify. I have personal knowledge of

the facts attested to herein.

2. I am a defendant in the above-captioned case.

3. Several documents were submitted as evidence in the Motion for Reconsideration (“Motion”), dated May 24, 2010. These exhibits are referenced below.

4. Exhibit “A” attached to the Motion is a copy of a note from Merritt Thornhill to Terry Andersen, dated 3/25/96.

5. Exhibit “A” is a true and accurate copy of the note.

6. Exhibit “B” attached to the Motion is a copy of the Real Estate Purchase Contract signed by Terry Andersen and Merritt Thornhill on April 24, 1996.

7. Exhibit “B” is a true and accurate copy of the original Purchase Contract.

8. Exhibit “C” attached to the Motion is a copy of Power County tax Assessment notices dated July 8, 1996.

9. Exhibit “C” is a true and accurate copy of the original notices.

10. Exhibit “D” attached to the Motion is a copy of Power County Tax Reminders dated August 16, 1996.

11. Exhibit “D” is a true and accurate copy of the original reminders.

12. Exhibit “E” attached to the Motion is a copy of the Real Estate Purchase Contract page 1 of 8 of the documents submitted for a preliminary report.

13. Exhibit “E” is a true and accurate copy of the original page 1 of 8.

14. Exhibit “F” attached to the Motion is a copy of the Offer to Purchase page 8 of 8 of the documents submitted for a preliminary report.

15. Exhibit “F” from the Title “Offer to Purchase” to the end of the page is a true and



accurate copy of the original page 8 of 8.

16. Exhibit “G” attached to the Motion is a copy of the Corporate Warranty Deed dated July 2, 1996, and is comprised of two (2) pages.

17. Exhibit “G” is a true and accurate copy of the original Corporate Warranty Deed.

18. Exhibit “H” attached to the Motion is a copy of the Warranty Deed dated July 2, 1996, and is comprised of three (3) pages.

19. Exhibit “H” is a true and accurate copy of the original Warranty Deed.

20. Exhibit “I” attached to the Motion is a copy a property description that appears revised from the original attached to the Warranty Deed in paragraph 18 above.

21. Exhibit “I” has been used in prior hearings by our opponents, but is NOT a true and accurate copy of the original property description.

22. Exhibit “J” attached to the Motion is a copy of the Deed of Reconveyance issued by First American Title Company on October 26, 1996.

23. Exhibit “J” is a true and accurate copy of the original Deed of Reconveyance.

24. Exhibit “K” attached to the Motion is a copy of a letter from the Offices of Lyle D. Eliassen, dated July 1, 1996 to Metro National Title and is comprised of three (3) pages.

25. Exhibit “K” is a true and accurate copy of the Eliassen letter as was faxed to the Andersens on May 24, 2007.

26. Exhibit “L” attached to the Motion is a copy of the Final Closing Statement of the sale of property FROM Donald M. Thornhill, AKA D.M. Thornhill, Shirley Thornhill, and Indian Springs Natatorium, Inc. TO Recreational Properties A&B, and is comprised of two (2) pages.

27. Exhibit “L” is a true and accurate copy of the Final Closing Statement.

28. Exhibit "M" attached to the Motion is a copy of the Seller's Escrow Instructions dated July 2, 1996.

29. Exhibit "M" is a true and accurate copy of the Seller's Escrow Instructions.

30. Exhibit "N" attached to the Motion is a copy of a fax letter from Craig r. Jorgensen, attorney, to Ron Bitton of Professional Escrow Services, Inc. Dated September 19, 1997, and is comprised of two (2) pages.

31. Exhibit "N" is a true and accurate copy of the Jorgensen letter as copied from an escrow file held by Professional Escrow Services.

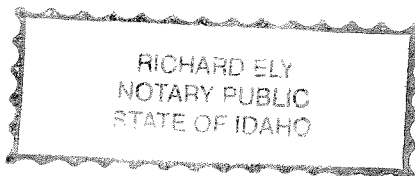
32. This affidavit is submitted to accompany the Motion for Reconsideration, dated May 24, 2010.

33. Further saith not.



TERRY ANDERSEN

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of June, 2010.



Notary Public for Idaho

Residing at: Paradise, Id.

My Commission Expires: 04/22/2015

CERTIFICATE OF SERVICE

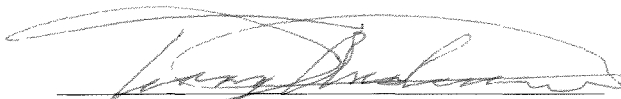
We hereby certify that on this 10<sup>th</sup> day of June, 2010, we hand-delivered and served a true and correct copy of the foregoing AFFIDAVIT OF TERRY ANDERSEN IN SUPPORT OF THE MOTION FOR RECONSIDERATION to:

Lane V. Erickson, Esq. OR his personal representative

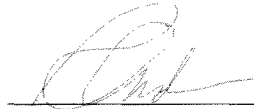
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.

201 E. Center Street

Pocatello, ID 83201



Terry Andersen



Rosanna Andersen

|   |            |
|---|------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |            |
| FILED 6-15-10                             | TIME 12:07 |
| CHRISTINE STEINLICHT, CLERK               |            |
| BY <i>S. Blanner</i>                      | DEPUTY     |

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC, )  
An Idaho Limited Liability Company, )  
 )  
 )  
Plaintiffs, )  
 )  
-vs- )  
 )  
TERRY and ROSANNA ANDERSEN, )  
Husband and wife; EVERETT AND )  
MARGIE ELLS, husband and wife; and )  
any and all individuals claiming any )  
possessory interest by or through them. )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-2009-066

MINUTE ENTRY AND ORDER

The above entitled matter came before the Court on Thursday, June 10, 2010, for hearing on Defendant's Motion for Reconsideration, and a scheduling conference to set a date for trial.

Plaintiff was represented by attorney, Lane Erickson, and Defendants, Terry and Rosanna Andersen, appeared pro se, and Norman Reece appeared on behalf of Everett and Margie Ells.

The Court heard Defendant's argument in support of their Motion for Reconsideration, and also considered Exhibit O (a map of the Indian Springs site) and Exhibit P (a recent tax

assessment notice which Defendants had recently received), submitted to the Court at the time of the hearing without objection. The Court heard argument from Plaintiff as well.

After considering the same, the Court advised the parties that it would only reconsider the matter of whether the mobile home was real or personal property and a written decision will issue within 30 days.

Defendants, Andersens, asked that the Court grant them additional time remove their personal property from the mobile home in question, and after considering the same,

IT IS HEREBY ORDERED that Defendant's motion is GRANTED. The Court will allow Defendants to keep their personal property in the mobile home and the related shed until this matter is scheduled for final hearing. If Defendants wish to inspect the personal property reference herein, that inspection time shall be worked out between the parties.

The Court advised the parties that the only issue remaining to be resolved is the Defendant's Amended Counterclaim seeking recovery of and/or damages for certain personal property that was located on the premises of the Indian Springs property through the years this matter has been in various litigation. Any further proceedings will be limited to this issue and will be confined to the allegations made by Defendants in their Amended Counterclaim. The Court ordered the following schedule to resolve this sole remaining issue.

First, the Defendants assert, in the Amended Counterclaim, that Indian Springs LLC, which is the Plaintiff in this case, has legal responsibility for actions taken by its predecessors and can be sued for Defendants claims on the personal property issues as the successor in interest to various other parties, who are alleged to have actually taken or damaged Defendants' personal property, as well as for the actions of Indian Springs, LLC. The Court advised the parties that this raises a significant legal question, and the Court directs the parties to submit authority and

any argument the parties have on this issue for initial resolution before considering the personal property claims on the merits.

THEREFORE, IT IS HEREBY ORDERED that Defendant shall submit authority and briefing to the Court on the legal issue referenced in the preceding paragraph within thirty days from the date of this Order. Plaintiff shall have thirty days to respond to Defendant's with its own authority and briefing. The Court will take that matter under advisement at that time unless it feels that oral argument on this issue is required.

On the merits of the Defendants claim for personal property losses/damages, Defendants shall submit all evidence on that claim, including affidavits and any and all documentation offered in support thereof, within ninety days of this Order. Plaintiff shall have until October 21, 2010, to submit responsive evidence, including any affidavits and/or documents.

IT IS FURTHER ORDERED that this matter is scheduled for hearing on these matters on **Friday, November 12, 2010, at 1:30 p.m.**

IT IS SO ORDERED.

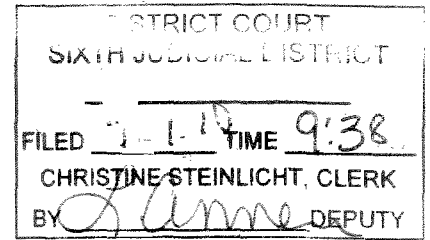
DATED this 10<sup>th</sup> day of June, 2010.



---

STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Terry and Rosanna Andersen  
Norman Reece, Esq.



IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS, LLC, an Idaho Limited )  
Liability Company )

Plaintiff, )

Case No. CV-2009-66

-vs- )

MEMORANDUM DECISION  
AND ORDER ON MOTION FOR  
RECONSIDERATION

TERRY & ROSANNA ANDERSEN, )  
husband and wife; EVERETT & )  
MARJORIE ELLS, husband and wife; )  
and any and all individuals claiming any )  
possessory interest by or through them; )

Defendants. )

This matter is before the Court on Defendants Terry and Rosanna Andersen's ("Andersens" or "Defendants") Motion for Reconsideration ("Motion") of the Memorandum Decision and Order entered on December 15, 2009 ("December Decision") and the Memorandum Decision and Order entered on March 31, 2010 ("March Decision").<sup>1</sup> The Court has carefully considered the submissions and arguments of both parties and now issues this Memorandum Decision on the matters before it.

---

<sup>1</sup> The history of this case is set forth substantially in the Court's December and March Decisions.

## STANDARD OF REVIEW

Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure states:

(B) Motion for Reconsideration. A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001). A party making a motion for reconsideration is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct.App.2006).

## ANALYSIS

In Andersens' Motion, they argue that the mobile home in dispute is personal property and request that the mobile home remains in place until all issues in this case are resolved. Also, Andersens discuss gross errors found in the closing papers, including deeds, and they have submitted several exhibits in support of their arguments.

In this Court's December Decision, the Court discussed, in depth, the issue of whether the mobile home was real or personal property, focusing on the Idaho Supreme Court decision of *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106, 111 (2009). In *Spencer*, the court held that "[b]ecause the 1981 Skyline mobile home was affixed to the land at the time of sale, we hold that the mobile home was properly transferred to the trustee for purposes of non-judicial foreclosure under I.C. § 45-1503." *Id.*

Based on the reasoning and law set forth by the Idaho Supreme Court, this Court found that the mobile home at issue in this case was real property, stating:



This facts admitted by the Defendants herein are virtually identical to *Spencer* and are set forth above. In both answers the Defendants admit that the mobile home is permanently attached to the land and cannot be moved. They also assert that the mobile home has a garage, storage room, patio walls and a cement floor. Andersens assert that the mobile home is a permanent residence with an attached garage, patios, a phone, well, septic tank and power pole. The testimony at the trial was similar. At no time have Defendants claimed that the mobile was anything but permanently affixed to the real property. Thus, the Court concludes that the mobile home is real property, pursuant to I.C. § 55-101, that it was subject to the prior judgment and foreclosure, and that Indian Springs is the owner of the mobile home.<sup>2</sup>

The Andersens assert now that this Court should have concluded that the mobile home is personal property. However, the Andersens provide no case law or additional facts that support their position or cause this Court to consider changing its prior decision regarding the issue of whether the mobile home is personal property.<sup>3</sup> Therefore, Andersons' Motion for Reconsideration regarding the mobile home/personal property issue is hereby DENIED. To the extent that Andersons' Motion seeks reconsideration of any issues that have been resolved in the prior Power County Case #CV-2005-0305, the Court declines to revisit these issues again and the Motion is DENIED.

At the hearing on the Motion, held June 8, 2010, the Court granted Defendants' motion to allow their personal property to stay in the mobile home until all issues in this case are resolved. The Court also set some direction and a schedule to reach a final conclusion in this matter.<sup>4</sup> That schedule will be adhered to by the parties.

#### CONCLUSION

Based on the foregoing, the Court DENIES the Defendants Terry and Rosanna Andersen's Motion for Reconsideration.

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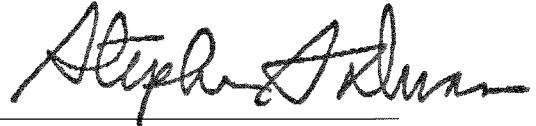
<sup>2</sup> December Decision, p. 13.

<sup>3</sup> Andersons did provide some exhibits, such as assessor's notices on the mobile home and 1996 contracts and warranty deeds that involve the sale of the total Indian Springs property, but those do not establish that the mobile home is personal, rather than real property.

<sup>4</sup> See Minute Entry dated June 8, 2010.

IT IS SO ORDERED.

DATED this 1<sup>st</sup> day of July, 2010.



STEPHEN S. DUNN  
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1<sup>st</sup> day of July, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Terry & Rosanna Andersen, Pro Se  
775 Yellowstone Ave, #121  
Pocatello, Idaho  
83201

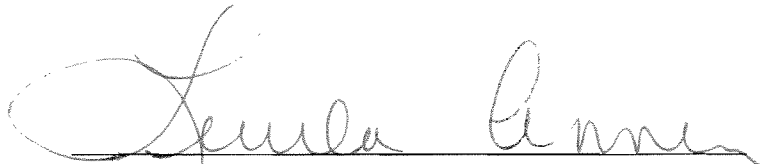
☒ U.S. Mail  
☐ Overnight Delivery  
☐ Hand Delivery  
☐ Facsimile

Lane Erickson  
Racine, Olson, Nye, Budge and Bailey  
P.O. Box 1391  
Pocatello, Idaho 83204-1391

☒ U.S. Mail  
☐ Overnight Delivery  
☐ Hand Delivery  
☐ Facsimile

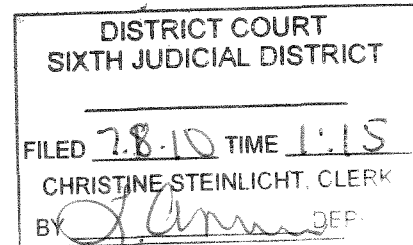
Norman Reece, Esq.  
445 W. Chubbuck Rd., Suite D  
Chubbuck, Idaho 83202

☒ U.S. Mail  
☐ Overnight Delivery  
☐ Hand Delivery  
☐ Facsimile

  
Deputy Clerk

Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Tel: (208) 233-0128  
Fax: (208) 233-4895  
Idaho State Bar No. 3898

Attorney for Defendants/  
Counterclaimants



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company,

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants.

Case No. CV-2009-066

**ANSWER TO VERIFIED AMENDED  
COMPLAINT FOR EVICTION AND  
COUNTERCLAIM**

## ANSWER

Defendants, Terry and Rosanna Andersen (“Andersens”) and Everett and Margie Ells (“Ells”), by and through their attorney, Norman G. Reece, P.C., and without admitting any fault, responsibility, liability, injuries or damages, and without assuming the burden of proof on any issue, hereby answer the Verified Amended Complaint for Eviction, filed October 16, 2009 (“Amended Complaint”) as follows:

1. Plaintiff’s Amended Complaint fails to state a claim upon which relief can be granted, and must therefore be dismissed pursuant to Idaho Rule of Civil Procedure (I.R.C.P.) 12(b)(6).
2. Defendants deny each and every allegation of the Amended Complaint not specifically and expressly admitted herein.
3. Defendants specifically deny Paragraphs 7, 8 and 9 of the Amended Complaint.
4. Defendants admit the allegations of Paragraph 1 of the Amended Complaint.
5. Defendants lack sufficient knowledge and information to form a belief as to the truth of all of the allegations of Paragraphs 3 and 4 of the Amended Complaint and therefore deny the same.
6. Answering Paragraph 2 of the Amended Complaint, Defendants admit the Judgment, Decree of Foreclosure and Order of Sale, filed November 19, 2007 in Bannock County Case No. CV-2005-00305 says what it says.
7. Answering Paragraph 5 of the Amended Complaint, Defendants admit that they have not redeemed the premises within one year of the sheriff’s sale, but are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of said Paragraph 5 and therefore deny the same.

8. Answering Paragraph 6 of the Amended Complaint, Defendants admit Exhibit C is a true and correct copy of the recorded Sheriff's Deed referenced in said Paragraph 6, but lack sufficient knowledge and information to form a belief as to the truth of the remaining allegations of said Paragraph 6 and therefore deny the same.

#### **FIRST AFFIRMATIVE DEFENSE**

9. **Bad Faith.** Plaintiff was guilty of bad faith in connection with the events alleged in the Amended Complaint.

#### **SECOND AFFIRMATIVE DEFENSE**

10. **Estoppel.** Plaintiff should be equitably estopped because, *inter alia*, he failed to provide notice of default to all of the Defendants.

#### **THIRD AFFIRMATIVE DEFENSE**

11. **Failure to Join an Indispensable Party.** Plaintiff has failed to join a party indispensable to this action.

#### **FOURTH AFFIRMATIVE DEFENSE**

12. **Failure to Mitigate Damages.** Plaintiff has failed to take reasonable steps to mitigate the claimed or alleged damages.

#### **FIFTH AFFIRMATIVE DEFENSE**

13. **Failure to Serve Notice of Default.** Plaintiff has failed to serve or otherwise provide each of these Defendants with any notice of default.

#### **SIXTH AFFIRMATIVE DEFENSE**

14. **Failure to State a Claim.** Plaintiff has failed to state a claim upon which relief can be granted.

### **SEVENTH AFFIRMATIVE DEFENSE**

15. **Failed Statutory Basis.** Idaho Code (I.C.) § 6-310, the basis for Plaintiff's Amended Complaint, does not apply to the circumstances of this case.

### **EIGHTH AFFIRMATIVE DEFENSE**

16. **Not Tenants at Sufferance.** Defendants are not tenants at sufferance, because there was no trustee's sale as required for such status by I.C. § 45-1506(11).

### **NINTH AFFIRMATIVE DEFENSE**

17. **Title Defective.** The underlying documents to which Plaintiff claims title are defective and thus fail to convey clear title of all interests in said property to the Plaintiff.

### **ATTORNEY FEES AND COURT COSTS**

18. Defendants have been required to retain the services of legal counsel in this matter and are therefore entitled to an award of attorney fees and court costs pursuant to I.C. § 12-120 and I.R.C.P. 54.

### **RESERVATION OF RIGHT TO AMEND**

19. Pending discovery of documents and information relevant to this litigation, Defendants reserve the right to amend this answer to allege additional affirmative defenses.

### **COUNTERCLAIM**

Terry and Rosanna Andersen ("Andersens") and Everett and Margie Ells ("Ells"), by and through their attorney, Norman G. Reece, P.C., and for counterclaims against Indian Springs, L.L.C. and Thomas M. Henesh, allege as follows:

### **PARTIES**

1. Andersens are husband and wife and reside in Pocatello, Bannock County, Idaho.
2. Ells are husband and wife and reside in Pocatello, Bannock County, Idaho.

3. Counterdefendant, Indian Springs, L.L.C., is a limited liability company organized under the laws of the State of Idaho on or about September 16, 2005.

4. Counterdefendant, Thomas M. Henesh, is an individual residing in Belgrade, Gallatin County, Montana, and is a member of Indian Springs, L.L.C., with management authority. At all times relevant, Thomas M. Henesh acted with authority and on behalf of Indian Springs, L.L.C. As such, the tortious acts perpetrated by Thomas M. Henesh as set forth herein are binding upon and imputed to Indian Springs, L.L.C., and in addition subject Thomas M. Henesh to personal liability therefor.

### **JURISDICTION AND VENUE**

5. The amount in controversy exceeds the minimum jurisdictional amount for the above-captioned Court. This Court has jurisdiction pursuant to Idaho Const. art. V § 20 and Idaho Code (I.C.) §§ 1-705 and 5-514(a)-(c).

6. Venue is appropriate in Power County, Idaho, pursuant to I.C. § 5-401.

### **FACTS**

7. On or about April 24, 1996, Andersens acquired an ownership interest in a 1973 Van Dyke mobile home located at 3251 Indian Springs Road in Power County, Idaho.

8. On or about July 2, 1996, Andersens purchased land on which the mobile home referenced in Paragraph 7 was located. The legal description of the land is attached hereto as Exhibit A. and is incorporated herein as if set forth in full.

9. The land purchase described in Paragraph 8 was secured by a promissory note and mortgage.

10. From 1996 up to and including 2009, the Andersens (a) made permanent improvements to the land referenced in Paragraph 8 which were substantial in relation to the value

of said land, and (b) otherwise cared for and maintained the premises. These improvements and maintenance include, but are not necessarily limited to, the following:

- Caboose hookups
- east grove hookups # 9-13
- grove and west Grove hookups (new wiring & conduit)
- electrical hookup in driveway
- raking in north shelter area
- raking in grove area
- raking in west picnic area and caboose area
- painting of pools
- concrete work as needed (deck and large hot pool)
- grass seeding where needed
- golf carts going
- refurbish swamp cooler
- picnic table repairs
- painting of picnic tables as needed
- foot bridges repaired as needed
- new flag
- check all water faucets for repairs as needed
- repair water line east of house
- equipment overhaul and repair of golf tractor, tractor, turf mower, cub cadet, blue pickup
- pool decks
- pool concession area



- pool repair
- pool lifeguard chair and equipment
- pool restrooms and hot pools
- campground electrical
- campground water supply
- campground restrooms
- campground roads
- campground pest control and garbage
- campground horseshoe pits moved for safety
- campground table repair for safety
- campground computerized reservations
- campground fire rings for safety
- property engineering
- campground sewer installation and drain field
- signs
- ground watering system
- tree planting
- equipment repairs and replacement
- pond and creek repair
- foot bridge repair
- surveillance system
- supplemental well
- tree removal for safety

- home damages

11. After acquiring the mobile home referenced in Paragraph 7 and the land referenced in Paragraph 8, Andersens and Ells paid property taxes on said mobile home and/or said land.

12. On or about September 27, 2005, Indian Springs, L.L.C., was assigned the promissory note and mortgage referenced in Paragraph 9.

13. From 1996 through September of 2009, Andersens paid for the water rights and electrical service to the land referenced in Paragraph 8.

14. In January or February of 2009, Henesh, individually and/or in his capacity as a member and manager of Indian Springs, L.L.C., exercised wrongful dominion or control over the personal property of the Andersens and the Ells. Said items of personal property include, but are not limited to, the following:

- 1 1985 Ford Pickup
- 1 650 Gal. Chemical Tank & Sprayer for weed control
- 1 Case 42" riding Mower
- 1 Yellow 91" riding Mower
- 2 Propane tanks & Weed burners
- 2 High Performance Sprinklers mounted on two trailers
- 750' 3" Fire/Irrigation Hose for high-performance sprinklers
- 2 Bose Speakers for swimming pool
- 2 Garden Speakers for hot pools
- Wood block kitchen table
- Timekeeping clock
- Microwave cart

- 1 Robot Pool Cleaner
- 1 Post Hole Digger for Tractor
- 1 Blade for Tractor
- 1 Red Bench Vise
- 1 Gasoline powered 110 volt Generator
- 1 Ford Mustang and separate motor
- 1 350 gallon electric Hot Pool
- 1 Propane Space Heater
- 1 Portable Fireplace
- 1 Fabric Cutter
- Miscellaneous Art Work in Concessions
- 2 Sharp Cash Registers
- 1 Refrigerator (apartment)
- 1 sink/fridge/stove unit
- candy dispenser fully stocked
- cleaning supplies and dispensers and paper products, soap, etc.
- display racks, counters, containers and stock
- carpets, rugs, treatment tables
- 2 dogs
- 200 ducks
- 2 geese
- 2000 tropical fish
- Australian Crawdads

- fungible food and restaurant supplies and equipment
- pool suits & towels
- blower
- horseshoe pits & shoes
- 25 golf clubs
- 1000 golf balls
- lifeguard and pool equipment
- pool chemicals
- 10 hoses & nozzles
- 2 telephone booths
- 1 red tool case
- 1 volleyball set, with standard balls & nets
- 1 sign
- 1 swamp cooler
- costumes
- 1 24' travel trailer
- 1 large sofa (apartment)
- 1 wet/dry shop vac
- 8+ boxes acrylic floor tile
- 2 poultry feeders
- 1 small brown refrigerator (belonging to 3<sup>rd</sup> party Hatch)
- 1 Amanda freezer (behind double wide mobile home)
- 1 blue EZGO golf cart

- 1 desk
- 1 chair
- 4 pipe wrenches (different sizes)
- 1 10" wheel grinder
- 1 Mo-Ped
- 1 stainless steel work table
- Miscellaneous hand tools
- 7 10' x 20' canopies
- 1 boiler for hot pools
- 2 boilers for hot pools
- 1 ninja video game
- 1 air hockey game
- 3 display cases
- 1 stainless steel rolling salad bar
- 1 chest freezer
- 1 Manitoba ice maker
- 1 microwave
- 1 ice cream machine
- 1 compressor
- various display equipment for future gift shop
- various electrical repair and plumbing parts
- 1 concrete mixer
- various hats and shirts for resale

- various Indian jewelry and statuettes
- swim aids
- 1 plow-like snow shovel
- 1 3/8 power hand drill
- various drill bits
- various ropes
- 2 bench/picnic tables
- 2 wheelbarrows
- 3 ladders
- miscellaneous firewood
- 1 sink/fridge/stove unit
- 1 blower used to clear pool decks
- miscellaneous prizes
- miscellaneous float decorations
- miscellaneous paint and brushes
- 1 air compressor
- 1 hide-a-bed
- 2 cookie ovens
- 1 pizza oven
- miscellaneous mirrors
- 1 concession book
- 1 portable dance floor with 20 4' x 8' panels
- miscellaneous pool-side loungers and chairs

- 6 fire extinguishers
- 1 frame for Greenhouse (Mahoney)
- 1 4' x 8' storage shed
- 1 basketball, standard
- miscellaneous contents of storage unit

15. In January or February of 2009, Henesh, individually and/or in his capacity as a member and manager of Indian Springs, L.L.C., exercised wrongful dominion or control over the personal property of the Andersens and/or Ells by (a) destroying the Andersens' locks on a well house and its power box, (b) replacing the destroyed locks with his own locks, and (c) changing certain equipment in the well house.

16. The items referenced in Paragraphs 14 and 15 have either been lost or damaged, and/or the Andersens and Ells have been deprived of their use or enjoyment as a result of Henesh's exercise of wrongful dominion or control over said items.

#### **COUNT I – CONVERSION.**

17. Andersens and Ells reallege Paragraphs 1-16 as if set forth in full herein and incorporate the same by reference.

18. At the time of the acts complained of herein, the Andersens and/or the Ells were the legal owners and were entitled to possession of the property referenced in Paragraphs 14 and 15.

19. Henesh converted the property referenced in Paragraphs 14 and 15 to his own use, inconsistently with and in denial of the rights of Andersens and Ells in said property and/or destroyed said property.

20. As a result of Henesh's conduct as set forth herein, the Andersens and the Ells have incurred damages by way of loss of personal property, damage to and resulting diminution in value,

loss of use, or personal value to Andersens and Ells, in an amount to be proved at trial.

**COUNT II – UNJUST ENRICHMENT.**

21. The Andersens reallege Paragraphs 1-16 as if set forth in full herein and incorporate the same by reference.

22. The Andersens have conferred certain benefits upon Indian Springs, L.L.C. and Henesh, and such benefits have been appreciated by Indian Springs, L.L.C., and Henesh, by way of valuable improvements made to the land described in Paragraph 8 and general maintenance to the premises as described in Paragraph 8.

23. Accepting and retaining said benefits by Indian Springs, L.L.C., and Henesh would be inequitable under the circumstances without payment to the Andersens for (a) the value of the improvements the Andersens made to the property described in Paragraph 8, (b) the value of the maintenance described in Paragraph 8, and (c) the resources the Andersens invested in said property.

24. Thus, Indian Springs, L.L.C., and Henesh have been unjustly enriched at the expense of the Andersens.

25. Therefore, the Andersens are entitled to damages in an amount that will fairly and adequately compensate them for the benefits referenced in Paragraphs 22 and 23.

**RESERVATION OF RIGHT TO AMEND**

26. Pending discovery of documents and information relative to this Counterclaim, the Andersens and the Ells reserve the right to amend this Counterclaim to bring further causes of action.

**ATTORNEY FEES AND COURT COSTS**

27. The Andersens and the Ells have been required to retain the services of legal counsel in this matter and are entitled to an award of attorney fees and court costs pursuant to I.C. § 12-120 and I.R.C.P. 54.



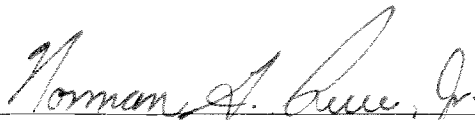
**PRAYER FOR RELIEF**

WHEREFORE, the Andersens and the Ells pray for the judgment, decree and order of this Court, granting the following forms of relief, either cumulatively or in the alternative, as the Court may deem just and equitable:

1. Dismissing the Amended Complaint, with Plaintiff taking nothing thereby;
2. Awarding the Andersens and the Ells their damages as set forth herein;
3. Awarding the Andersens and the Ells their costs and attorney fees incurred in this litigation; and
4. Granting the Andersens and the Ells such other and further relief as this Court deems just.

DATED this 7th day of July, 2010.

NORMAN G. REECE, P.C.

By   
Norman G. Reece, Jr., of the Firm, Attorney  
for Defendants/Counterclaimants

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of July, 2010, I served a true and correct copy of the foregoing ANSWER TO VERIFIED AMENDED COMPLAINT FOR EVICTION AND COUNTERCLAIM, by depositing the same in the United States mail, at Pocatello, postage pre-paid, in an envelope addressed to:

Lane V. Erickson  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204-1391

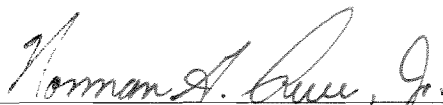
  
Norman G. Reece, Jr.

Exhibit     A

SECTION LINE OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., AND WHICH POINT IS ALSO 50' EAST OF THE CENTERLINE OF SAID HIGHWAY AND 67.0 FEET EAST OF THE NORTH-SOUTH CENTER QUARTER SECTION LINE OF SAID SECTION; THENCE SOUTH 85°30' EAST 1182.0 FEET TO A POINT, WHICH POINT IS ON THE SOUTHWESTERLY SHOULDER OF AN EXISTING COUNTY ROAD; AND NORTH 77°25' WEST, 83.2 FEET OF THE SOUTHEAST CORNER OF AN EXISTING CONCRETE BRIDGE WHICH CROSSES SAID ROAD; THENCE SOUTH 44°38' EAST 332.0 FEET TO ANOTHER POINT ON THE AFORESAID ROADWAY, THE TRUE POINT OF BEGINNING; THENCE SOUTH 46°15' EAST 112.5 FEET; THENCE SOUTH 57°47' EAST 261.0 FEET; THENCE SOUTH 32°13' WEST 362.0 FEET TO A POINT ON THE NORTHEASTERLY BANK OF AN EXISTING NATURAL DRAINAGE CREEK; THENCE NORTH 57°47' WEST 24.0 FEET TO A POINT; THENCE NORTH 12°47' WEST 127.26 FEET; THENCE NORTH 57°47' WEST 147.0 FEET; THENCE NORTH 32°13' EAST 148.0 FEET; THENCE NORTH 17°47' WEST 168.0 FEET; THENCE NORTH 58°14' EAST 42.5 FEET TO THE PLACE OF BEGINNING.

ALL IN THE SE¼ SE¼ OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M.

EXCEPTING THEREFROM: A PARCEL OF LAND IN THE SE¼ SE¼ OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE NORTH 89°53' WEST, ALONG THE SOUTH LINE OF SAID SECTION, 25.00 FEET TO THE WEST LINE OF AN EXISTING COUNTY ROAD (COLD CREEK ROAD); THENCE NORTH 0°30' EAST, ALONG SAID ROAD 2.90 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 38°20' FOR AN ARC LENGTH OF 167.26 FEET; THENCE NORTH 38°50' WEST, 332.96 FEET; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 18°55', FOR AN ARC LENGTH OF 148.57 FEET; THENCE NORTH 57°45' WEST, 120.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING THE SIDE OF SAID COUNTY ROAD, SOUTH 35°28' WEST, 450.48 FEET; THENCE NORTH 65°28' WEST, 24.95 FEET; THENCE NORTH 35°42' WEST, 83.73 FEET; THENCE NORTH 61°20' WEST, 117.19 FEET; THENCE NORTH 76°13' WEST, 68.13 FEET; THENCE NORTH 26°47' WEST, 63.38 FEET; THENCE NORTH 13°13' EAST, 56.92 FEET; THENCE NORTH 57°10' WEST, 43.21 FEET; THENCE NORTH 31°40' EAST, 362.00 FEET TO THE SOUTHERLY SIDE OF SAID COUNTY ROAD; THENCE SOUTH 57°59' EAST, 429.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, POWER COUNTY, IDAHO, BEING A PORTION OF THAT CERTAIN REAL PROPERTY CONVEYED TO M.K. THORNHILL AND JOSEPHINE THORNHILL, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID RECREATIONAL AREA THAT BEARS NORTH 31°49' WEST 2247.1 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID SECTION 18, THENCE NORTH 0°05' EAST 188.0 FEET, THENCE NORTH 33°04' EAST 214.7 FEET, THENCE SOUTH 89°55' WEST 377.7 FEET, THENCE SOUTH 4°57' WEST 342.2 FEET, THENCE SOUTH 84°47' EAST 291.6 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT: ANY PROPERTY LYING WEST OF HIGHWAY 37, IN SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 EAST BOISE MERIDIAN, POWER COUNTY, IDAHO.

PARCEL 1:

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., POWER COUNTY, IDAHO, LESS RIGHT OF WAY.

EXCEPTING THEREFROM: A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY SIDE OF COLD CREEK ROAD AND THE SOUTH LINE OF THE SE $\frac{1}{4}$  SE $\frac{1}{4}$  FROM WHICH THE CORNER OF SAID SECTION 18 BEARS SOUTH 89°53' EAST, 25.00 FEET; THENCE NORTH 89°53' WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, 604.70 FEET; THENCE NORTH 43°00' WEST, 70.60 FEET; THENCE NORTH 15°49' WEST 144.39 FEET; THENCE NORTH 65°28' WEST, 49.62 FEET; THENCE NORTH 35°28' EAST, 450.48 FEET TO THE SOUTHWESTERLY SIDE OF AN EXISTING COUNTY ROAD; THENCE SOUTH 57°45' EAST, ALONG THE SIDE OF SAID COUNTY ROAD, 120.00 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 18°55' FOR AN ARC LENGTH OF 148.57 FEET; THENCE SOUTH 38°50' EAST, 332.96 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF 38°20' FOR AN ARC LENGTH OF 167.26; THENCE SOUTH 0°30' EAST, 2.90 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM: BEGINNING AT A POINT ON THE SOUTH LINE OF AND NEAR THE SOUTHEAST CORNER OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M., BY A POWER POLE ON THE WESTERLY LINE OF A COUNTY ROAD; THENCE WESTERLY 604.0 FEET TO THE EASTERLY LINE OF AN EXISTING NATURAL DRAINAGE CREEK, COMMONLY KNOWN AS COLD CREEK, ON THE SECTION LINE AND MARKED WITH A 1 $\frac{1}{2}$ " X 3 $\frac{1}{2}$ " IRON PIN DRIVEN 2 $\frac{1}{2}$  FEET INTO THE GROUND; THENCE NORTH 27°32' WEST 236.0 FEET TO A STEEL FENCE POST ON THE NORTHEASTERLY BANK AND CURVE TO THE LEFT OF SAME CREEK; THENCE ON A CURVE TO THE RIGHT OF WITH A RADIUS EQUAL TO 51 FEET, AND DELTA ANGLE EQUAL TO 64°00' AND LENGTH OF 56.8 FEET; THENCE NORTH 36°28' EAST 391.0 FEET, MORE OR LESS, TO A SECOND POINT ON THE SOUTHWESTERLY BOUNDARY LINE OF SAID COUNTY ROAD; THENCE SOUTH 57°00' EAST 120.0 FEET TO A THIRD POINT ON THE ROAD LINE; THENCE ALONG THIS ROAD LINE A CURVE TO THE RIGHT WITH A RADIUS OF 910.0 FEET, CHORD 635 FEET AND A LENGTH OF CURVE OF 648.0 FEET, BOTH MORE OR LESS, TO PLACE OF BEGINNING.

ALL IN THE SOUTHEASTERLY PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION 18, TOWNSHIP 8 SOUTH, RANGE 31 E.B.M.

EXCEPTING THEREFROM: COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY #37, WHICH POINT IS ONE-QUARTER MILE NORTH OF THE SOUTHERLY

PARCEL 2

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 31 EAST OF THE BOISE MERIDIAN, POWER COUNTY, IDAHO, BEING A PORTION OF THAT CERTAIN REAL PROPERTY CONVEYED TO M.K. THORNHILL AND JOSEPHINE THORNHILL, AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID RECREATIONAL AREA THAT BEARS NORTH 31°49' WEST 2247.1 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID SECTION 18, THENCE NORTH 0°05' EAST 188.0 FEET, THENCE NORTH 33°04' EAST 214.7 FEET, THENCE SOUTH 89°55' WEST 377.7 FEET, THENCE SOUTH 4°57' WEST 342.1 FEET, THENCE SOUTH 84°47' EAST 291.9 FEET TO THE POINT OF BEGINNING.

Lane V. Erickson, Esq. (ISB No. 5979)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P. O. Box 1391/Center Plaza  
Pocatello, Idaho 83204-1391  
(208) 232-6101 FAX: 232-6109

*Attorney for Plaintiff Indian Springs, LLC*

|   |                  |
|---|------------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |                  |
| FILED <u>8-9-10</u>                       | TIME <u>3:04</u> |
| CHRISTINE STEINLICHT, CLERK               |                  |
| BY <u>[Signature]</u>                     | DEPUTY           |

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

★ ★ ★ ★ ★

INDIAN SPRINGS, LLC, an Idaho limited  
liability company

Plaintiff,

vs.

TERRY & ROSANNA ANDERSON, husband  
and wife; EVERETT & MARGIE ELLS,  
husband and wife; and any and all individuals  
claiming any possessory interest by or through  
them;

Defendants.

Case No. CV 2009-066

**MOTION TO DISMISS**

COMES NOW the Plaintiff INDIAN SPRINGS, LLC, an Idaho limited liability company (hereafter "Plaintiff"), pursuant to Rules 12(b)(6), 12(b)(8), 15, and 54, and for the legal reasons set forth in the Memorandum In Support of Motion to Dismiss filed herewith, hereby submits its Motion to Dismiss.

DATED this 16<sup>th</sup> day of August, 2010.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: Lane V. Erickson  
LANE V. ERICKSON  
Attorney for Plaintiff Indian Springs, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16<sup>th</sup> day of August, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Norman G. Reece, Jr.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Attorney for the Defendants

☒ U. S. Mail  
Postage Prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

Lane V. Erickson  
LANE V. ERICKSON

Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Tel: (208) 233-0128  
Fax: (208) 233-4895  
Idaho State Bar No. 3898

Attorney for Defendants/  
Counterclaimants

|   |                  |
|---|------------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |                  |
| FILED <u>9-21-10</u>                      | TIME <u>2:38</u> |
| CHRISTINE STEINLICHT, CLERK               |                  |
| BY <u>[Signature]</u>                     | DEPUTY           |

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company.

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants.

Case No. CV-2009-066

**MOTION FOR LEAVE TO AMEND  
PLEADINGS AND NOTICE OF  
HEARING**



Defendants, Terry and Rosanna Andersen, and Everett and Margie Ells, through their attorney, Norman G. Reece, P.C., move the Court for leave to amend “Defendants’ Answer and Counterclaim,” filed March 31, 2009 (“Answer and Counterclaim”). On July 8, 2010, Defendants filed an Answer to Verified Amended Complaint for Eviction and Counterclaim (“Answer and Amended Counterclaim”). A true and correct copy of the Answer and Amended Counterclaim was served on Plaintiff’s counsel July 7, 2010.

This motion is brought pursuant to Idaho Rule of Civil Procedure (I.R.C.P.) 15(a), and is made on the following grounds:

1. Under the I.R.C.P., “leave shall be freely given when justice so requires....” I.R.C.P. 15(a).

2. The Court has discretion to allow an amended pleading to remain on file, even though it was filed without leave to amend. *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 613, 114 P.3d 974, 983 (2005); *Eastern Idaho Economic Development Council v. Lockwood Packaging Corp. Idaho*, 139 Idaho 492, 496, 80 P.3d 1093, 1097 (2003).

3. The Answer and Amended Counterclaim filed in July of 2010 relates back to the Answer and Counterclaim filed in March of 2009. Most, if not all, of the allegations in the Answer and Amended Counterclaim can be found in the “Counter-Complaint” found in the Answer and Counterclaim filed in March of 2009. *See generally* “Counter-Complaint” at 5-13. In particular, the “Counter-Complaint” does allege a conversion action. Answer and Counterclaim at 6 ¶ 12, 12 ¶ 6. The Answer and Amended Counterclaim of July 2010 merely enumerates the items of personal property alleged to have been converted. Answer and Amended Counterclaim at 8-13. In addition, the original Answer and Counterclaim was against Indian Springs, L.L.C., and the Answer and Amended Counterclaim asserts the cause of action against Indian Springs, L.L.C., as well as its

principal, Thomas M. Henesh.

4. Plaintiffs are liable to the Defendants on the conversion claim independently of any liability of Plaintiff's predecessors in interest to the Defendants.

a. "An actor may be liable where he has in fact exercised dominion or control, although he may be quite unaware of existence of rights with which he interferes, and a defendant's intention, good or bad faith, and his knowledge or mistake are immaterial." *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 743, 979 P.2d 605, 616 (1999). Therefore, it is immaterial whether Plaintiff knew the items he received in the purchase from his predecessors were the subject of a conversion claim by the Defendants.

b. "An actor commits conversion if the actor mistakenly believes that he or she is acting legally with respect to the other person's property [citation omitted], and even if the actor innocently acquires the property from a knowing converter." *In re Martin*, 328 Or. 177, 184-85, 970 P.2d 638, 642 (1998). Thus, it does not matter whether any limitations period ran on Plaintiff's predecessors in interest. The facts alleged in the Answer and Amended Complaint assert an independent action for conversion against the Plaintiffs. *Cf. Phillips v. Utah State Credit Union*, 811 P.2d 174, 178-79 (Utah 1991) (holding that although the limitations period for a deficiency judgment had run, the defendant could still pursue a counterclaim for conversion based on separate acts of the plaintiff).

c. One who purchases converted property "is also a converter and must answer in damages to the true owner." *Kenyon v. Abel*, 36 P.3d 1161, 1165 (Wyo. 2001).

d. "[A] subsequent action for conversion is not precluded by an initial lawful taking of property." *Wolfe v. Faulkner*, 628 P.2d 700, 704 (Okla. 1981).

e. "An innocent third party purchaser from a wilful trespasser/converter may be held liable for conversion because knowledge that the goods are converted is not essential to establish culpability." *Bloedel v. Timberlands Development, Inc. v. Timber Industries, Inc.*, 28 Wash. App. 669, 679, 626 P.2d 30, 36, rev. denied, 95 Wash. 2d 1027 (1981).

NOTICE OF HEARING

PLEASE TAKE NOTICE that on Thursday, the 7th day of October, 2010, at 2:00 p.m. of said day, or as soon thereafter as counsel can be heard, in the Courtroom of said Court, Power County Courthouse, American Falls, County of Power, State of Idaho, the undersigned will call up for hearing before the Court Defendants/Counterclaimants' Motion for Leave to Amend Pleadings.

DATED this 20th day of September, 2010.

NORMAN G. REECE, P.C.

By Norman G. Reece, Jr.  
Norman G. Reece, Jr., of the Firm, Attorney  
for Defendants/Counterclaimants

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2010, I served a true and correct copy of the foregoing MOTION FOR LEAVE TO AMEND PLEADINGS AND NOTICE OF HEARING, by depositing the same in the United States mail, at Pocatello, postage pre-paid, in an envelope addressed to:

Lane V. Erickson  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204-1391

Norman G. Reece, Jr.  
Norman G. Reece, Jr.

Lane V. Erickson, Esq. (ISB No. 5979)  
RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED  
P. O. Box 1391/Center Plaza  
Pocatello, Idaho 83204-1391  
(208) 232-6101 FAX: 232-6109

*Attorney for Plaintiff Indian Springs, LLC*

|   |            |
|---|------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |            |
| FILED 9.29.10                             | TIME 12:48 |
| CHRISTINE STEINLICHT, CLERK               |            |
| BY <i>[Signature]</i>                     | DEPUTY     |

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

★ ★ ★ ★ ★

INDIAN SPRINGS, LLC, an Idaho limited  
liability company

Plaintiff,

vs.

TERRY & ROSANNA ANDERSON, husband  
and wife; EVERETT & MARGIE ELLS,  
husband and wife; and any and all individuals  
claiming any possessory interest by or through  
them;

Defendants.

Case No. CV 2009-066

**PLAINTIFF'S OBJECTION TO  
DEFENDANTS' MOTION TO AMEND**

COMES NOW the Plaintiff INDIAN SPRINGS, LLC, an Idaho limited liability company (hereafter "Plaintiff"), pursuant to Rules 12(b)(6), 12(b)(8), 15, and 54, and hereby submits its Objection to Defendants' Motion to Amend. In support of its Objection Plaintiff states as follows:

**ARGUMENT**

1. Plaintiff reasserts, and incorporates by reference into this Objection, all its arguments and legal citations as set forth in its Response to the Brief re: Assignor Liability and

its Memorandum in Support of its Motion to Dismiss the Answer to Verified Amended Complaint and Counterclaim, (hereafter "Plaintiff's Response"), which was filed with this Court on August 9, 2010. In Plaintiff's Response, the applicable legal standards of assignor liability, statute of limitations, judicial estoppel, res judicata – claim preclusion, and standing were raised by Plaintiff as authority that Defendants cannot amend their Answer to include the proposed counterclaims they are seeking. In their Motion to Amend, Defendants do not respond to these legal standards or the arguments made in Plaintiff's Response any way. The reason for this is that there is no legal authority supporting Defendants' ability to amend their Answer in the way they are proposing.

2. It is true that "in the best interest of justice, courts should favor liberal grants of leave to amend." However, "it is not an abuse of discretion for a court to deny a request for leave to amend a [pleading] if the new claims proposed to be asserted fail to state a valid claim." Stonewall Surplus Lines, Ins. Co. v. Farmers Ins. Co., 132 Idaho 318, 325, 971 P.2d 1142, 1149 (1998). The same standard applies when a proposed amendment seeks to add a new party as the Defendants are attempting in the present case. See, Baxter v. Cranev., 135 Idaho 166, 169, 16 P.3d 263,266 (2000). Due to the applicable legal standards and authority as set forth in Plaintiff's Response, the Defendants' proposed counterclaim fails to state a valid claim. As a result, pursuant to I.R.C.P. 15 and applicable law, Defendants' Motion to Amend should be denied.

3. Defendants claim that their proposed amendment is not materially different from their originally filed Answer and Counterclaim dated March 2009. (See Motion to Amend pg 2 paragraph 3.) This is not an accurate statement. Defendants originally claimed that Plaintiff was liable to Defendants simply because Plaintiff was a successor-in-interest to those other parties

that had actually converted and/or damaged the personal property Defendants claimed belongs to them. In their proposed amendment, however, Defendants seek to make the Plaintiff primarily liable for conversion and/or damage and also seek to add a new party, Mr. Thomas Henesh, individually.

4. In support of its claims that Plaintiff should be primarily liable, Defendants cannot provide any legal authority from Idaho so Defendants cite to cases in Oregon, Utah, Wyoming, Oklahoma and Washington. None of these citations responds in any way to the applicable legal authority or the arguments set forth in Plaintiff's Response. Additionally, even if Plaintiff's Response didn't exist, none of the out-of-state citations made by the Defendants are applicable or binding in Idaho.

#### CONCLUSION

All applicable law, as set forth in Plaintiff's Response, and as provided by Idaho courts concerning the ability of a party to amend their pleadings, supports the denial of Defendants' Motion to Amend their counterclaim. Plaintiff respectfully request that this Court deny Defendants' Motion to Amend and enter a final judgment in favor of Plaintiff's concerning the matter of personal property.

DATED this 29<sup>th</sup> day of September, 2010.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By: Lane V. Erickson  
LANE V. ERICKSON  
Attorney for Plaintiff Indian Springs, LLC

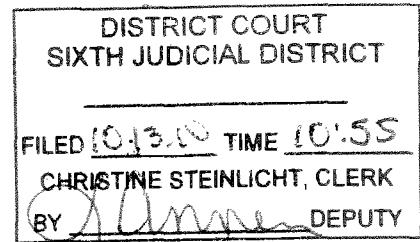
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 29<sup>th</sup> day of September, 2010, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Norman G. Reece, Jr.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Attorney for the Defendants

☐ U. S. Mail  
☐ Postage Prepaid  
☐ Hand Delivery  
☐ Overnight Mail  
☒ Facsimile

  
\_\_\_\_\_  
LANE V. ERICKSON



IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC, )  
An Idaho Limited Liability Company, )  
 )  
Plaintiffs, )  
 )  
-vs- )  
 )  
TERRY and ROSANNA ANDERSEN, )  
Husband and wife; EVERETT AND )  
MARGIE ELLS, husband and wife; and )  
any and all individuals claiming any )  
possessory interest by or through them. )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-2009-066

MINUTE ENTRY AND ORDER

The above entitled matter came before the Court on Thursday, October 7, 2010, for hearing on Defendant's Motion for Leave to Amend, and Plaintiff's Motion to Dismiss.

Plaintiff was represented by attorney, Lane Erickson, Norman Reece appeared on behalf of Defendants.

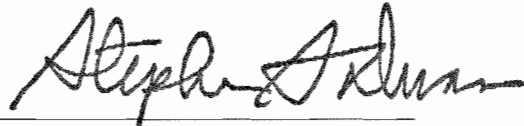
The Court heard argument from both parties on their motions, and took the matter under advisement.



The Court again encouraged Defendants to retrieve their personal property off of Plaintiff's property.

IT IS SO ORDERED.

DATED this 7<sup>th</sup> day of October, 2010.

A handwritten signature in black ink, appearing to read "Stephen S. Dunn", written over a horizontal line.

STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norman Reece, Esq.

|   |                  |
|---|------------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |                  |
| FILED <u>11-2-10</u>                      | TIME <u>3:42</u> |
| CHRISTINE STEINLICHT, CLERK               |                  |
| BY <u>[Signature]</u>                     | DEPUTY           |

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS, LLC, an Idaho Limited )  
Liability Company )

Plaintiff, )

Case No. CV-2009-066

-vs- )

TERRY & ROSANNA ANDERSEN, )  
husband and wife; EVERETT & )  
MARJORIE ELLS, husband and wife; )  
and any and all individuals claiming any )  
possessory interest by or through them; )

Defendants. )

MEMORANDUM DECISION  
AND ORDER RE: PLAINTIFF'S  
MOTION TO DIMISS AND  
DEFENDANTS' MOTION TO  
AMEND

This matter is before the Court on Plaintiff's Motion to Dismiss filed on August 9, 2010 and Defendants' Motion to Amend, filed September 21, 2010. Hearing on both motions was held on October 7, 2010. The Court has carefully considered the briefs and arguments of the parties, as well as any portion of the prior record which is relevant to the pending motions. The Court now issues this Memorandum Decision, GRANTING Plaintiff's Motion to Dismiss, in part, and DENYING Defendants' Motion to Amend.

## PROCEDURAL HISTORY<sup>1</sup>

On March 31, 2009 the Defendants, Terry and Rosanna Anderson (“Andersons”) and Everett and Margie Ells (“Ells”)(collectively “Defendants”), filed an Answer and Counterclaim to Plaintiff’s Complaint seeking eviction. Focusing on the Counterclaim, Defendants asserted the Plaintiff had committed certain acts of conversion, particularly the unauthorized taking of water and power which Defendants believe they were entitled to. In the Ejectment Decision, this Court found in Plaintiff’s favor on all issues in this case except possession of Defendants’ individual personal property which may have been located in a mobile home and/or a storage shed located on the property and claims by Defendants for conversion of water and power by Plaintiff. On July 8, 2010, Defendants filed an Answer to Verified Amended Complaint for Eviction and Counterclaim (“Amended Counterclaim”), along with a Brief Re: Assignor Liability. Focusing on the Amended Counterclaim, in addition to continuing to assert that Plaintiff converted water and power belonging to Defendants by taking control over the well house and the meter box, Defendants greatly expand their claim against Plaintiff in two ways. First, they identify work they had done on the property from 1996 up to 2009 and seek recovery of the value of those services on an unjust enrichment theory.<sup>2</sup> Secondly, Defendants claims that Plaintiff, and Thomas Henesh individually, converted and exercised wrongful control over a long list of certain personal property.<sup>3</sup> In response, Plaintiff, on August 9, 2010, filed a Response to

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<sup>1</sup> The background and facts of this case are extensive and span over several years. A more complete history and facts of this case can be found in the Court’s prior decisions, particularly the Memorandum Decision and Order filed December 15, 2009 (“Ejectment Decision”), where the Court found in favor of the Plaintiff in its claim for eviction (ejectment). See also Judge Bush’s Memorandum Decision in Power County Case No. CV-2005-305, filed June 2005 and *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 215 P.3d 457 (2009). This Memorandum refers only to those facts found in the record which are relevant to the remaining issues presented by the current motions.

<sup>2</sup> Amended Counterclaim, ¶¶ 10, 13, 15, 22-25.

<sup>3</sup> *Id.*, ¶¶ 14, 16, 18-20. It is important to distinguish between the two types of personal property identified by Defendants in their claims. The first type is business personal property (“business property”), i.e., that which Defendants claim was used by them in the operation of the Indian Springs property as a business. All but the last

Brief Re: Assignor Liability and Memorandum in Support of Motion to Dismiss Answer to Verified Amended Complaint and Counterclaim (“Motion to Dismiss”). The Court also received a Motion for Leave to Amend Pleadings and Notice of Hearing filed by the Defendants on September 21, 2010 (“Motion to Amend”). Subsequently, Plaintiff filed Plaintiff’s Objection to Defendants’ Motion to Amend on September 29, 2010.

#### STANDARD OF REVIEW

Motion to Amend. A motion to amend a complaint is governed by I.R.C.P. 15(a), which states:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty (20) days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires, and the court may make such order for the payment of costs as it deems proper. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

The determination of a motion to amend a complaint is within the sound discretion of the trial court. *Spur Products Corp. v. Stoel Rives LLP*, 142 Idaho 41, 43, 122 P.3d 300, 302 (2005).

In considering a proposed amendment to a Complaint, the Court may consider “whether the amended pleading sets out a valid claim, whether the opposing party would be prejudiced by any undue delay, or whether the opposing party has an available defense to the newly added claim.”

*Id.* at 44, 122 P.3d at 303. As a general rule, requests to amend are to be “freely given” absent undue delay, bad faith, undue prejudice, or the futility of the amendment. *Carl Christensen*

*Family Trust v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999); *Suits v. First*

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entry of the Amended Counterclaim ¶ 14 can be properly characterized as business property. The second type is individual personal property (“individual property”), which the parties have agreed constitutes the property used by the Defendants personally and which is located in the mobile home and a storage shed on the real property.

*Security Bank of Idaho*, 110 Idaho 15, 24-25, 713 P.2d 1374, 1383-84 (1985). On the other hand, the proposed amendment must adequately state a cause of action. If it does not, a denial of the request to amend is not an abuse of discretion. See *Black Canyon Racquetball Club, Inc. v. Idaho First Nat'l Bank*, 119 Idaho 160, 804 P.2d 900 (1991); *Wells v. United States Life Ins. Co.*, 119 Idaho 160, 804 P.2d 333 (Ct. App. 1991).

Motion to Dismiss. A Motion to Dismiss the Complaint is governed by I.R.C.P.12(b)(6), which provides:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion... (6) failure to state a claim upon which relief can be granted....

Further, I.R.C.P. 12(c) provides that, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

A motion to dismiss may be granted where "the plaintiff can prove no set of facts upon which the court could grant relief," and in such a case, "the complaint should be dismissed."

*Johnson v. Boundary School Dist. No. 101*, 138 Idaho 331, 334, 63 P.3d 457, 460 (2003)(citing *Gardner v. Hollifield*, 96 Idaho 609, 611, 533 P.2d 730, 732 (1975)). See also *Ernst v.*

*Hemenway and Moser Co., Inc.*, 120 Idaho 941, 946, 821 P.2d 996, 1001 (Ct. App. 1991) ("For a complaint to be dismissed under Rule 12(b)(6) on the ground that the complaint fails to state a claim, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.") Accord, *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 174, 923 P.2d 416, 420 ("When faced with an IRCP 12(b)(6) motion to dismiss, after drawing all inferences in favor of the non-moving party, a court must ask "whether a claim for relief has been stated.") In addition, "the nonmoving party is entitled to have all inferences from

the record viewed in its favor.” *Johnson*, 138 Idaho at 334, 63 P.3d at 460; *Ernst*, 120 Idaho at 946, 821 P.2d at 1001. “[A]s a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which the plaintiff includes allegations showing on the face of the complaint that there is some insurmountable bar to relief.” *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992).

This standard was reaffirmed in *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005) where the Court stated that “[a] motion to dismiss for failure to state a claim should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." (quoting *Gardner v. Hollifield*, 96 Idaho 609, 611, 533 P.2d 730, 732 (1975)). Indeed, “upon a rule 12(b)(6) motion to dismiss for failure to state a claim, the complaint must be viewed in the light most favorable to the plaintiff, it must be given the benefit of every reasonable intendment, and every doubt must be resolved in its favor.” *Gardner*, at 610-611, 731-732; *see also Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002).

Rule 12(b) also contemplates that if the Court allows consideration of matters outside the pleadings, a motion to dismiss shall then be “treated as a motion for summary judgment and disposed of as provided in Rule 56 ....” In this case substantial matters have been submitted outside the pleadings so the matter is considered as a Motion for Summary Judgment, but will be referred to as a Motion to Dismiss. “Summary judgment is proper ‘if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Northwest Bec-Corp v. Home Living Service*, 136 Idaho 835, 838, 41 P.3d 263, 267 (2002) (quoting IRCP Rule 56 (c)). *See also, Cox v. Clanton*, 137 Idaho 492, 494, 50 P.3d 987, 989

(2002). When considering a motion for summary judgment, a court should liberally construe all facts in favor of the nonmoving party and draw all reasonable inferences from the facts in favor of the nonmoving party. *Id.* Normally, summary judgment must be denied where reasonable persons could reach different conclusions or draw conflicting inferences from the evidence presented. *Id.*

### ANALYSIS

In Plaintiff's Motion to Dismiss, it makes the following arguments: (1) with regards to assignor liability, Defendants cannot provide this Court with any law that requires Plaintiff to be liable for the actions or conduct of its predecessors; (2) Defendants' filing of a new Counterclaim is nothing more than a recharacterization of the issue of Assignor Liability; (3) all legally applicable statutes of limitation prevent Defendants from raising any claims against Plaintiff for personal property or for unjust enrichment; (4) even if the law of assignor liability, Rule 15 and the applicable statute of limitations did not apply, the Defendants still do not prevail because, under the doctrine of judicial estoppel, they cannot now take a factual or legal position in this litigation that is different than what they took in this or previous litigations; (5) even if the law of assignor liability, Rule 15, the applicable statute of limitations and judicial estoppel were not applicable in this case, the claim preclusion arm of res judicata prevents the Defendants from raising new claims in the present litigation; (6) all items of repair, improvement, and/or replacement completed by the Andersens upon the real property were foreclosed and cannot now be used as a basis for a claim of unjust enrichment; and (7) Everett and Margie Ells have no standing to rely upon any of the claims raised in the counterclaim.

Defendants' contend that their Amended Counterclaim, filed in July of 2010, relates back to the original Answer and Counterclaim ("Original Counterclaim") filed in March of 2009. In

particular, the Defendants argue that the Original Counterclaim does allege a conversion action and that the Amended Counterclaim merely enumerates the items of personal property alleged to have been converted. In addition, the Amended Counterclaim asserts not only a cause of action against Indian Springs, L.L.C., but also against its principal, Thomas M. Henesh.

The Court recognizes that the Original Counterclaim does allege the tort of conversion on page 6, paragraph 12. In the Original Counterclaim, the Defendants allege that Plaintiff destroyed and removed and replaced locks Defendants placed on the well house and meter box. Defendants also claim that Plaintiff prevented access to power and water purchased by Defendants and that Plaintiff has used the water and power paid for by Defendants. In Defendants' Amended Counterclaim, the Defendants also attempt to expand the property subject to their conversion claim, listing numerous items of business property and unidentified items of individual property in a storage shed. The Court concludes that the Original Counterclaim does not assert that Indian Springs converted the business property or individual property other than the locks, water and power. Thus the question becomes whether the Amended Counterclaim asserts a valid claim, i.e., is there a legitimate claim against Indian Springs for the new claims being asserted? Assuming, without deciding, that the Amended Counterclaim relates back to the Original Counterclaim, the Court must determine whether the Defendants assert a legally valid claim in the following three areas: (1) conversion of business property/assignor liability; (2) unjust enrichment; and (3) addition of Thomas M. Henesh as a counterdefendant. The Court also addresses the alleged conversion of individual property, locks, water and power.

1. Conversion and Assignor Liability. The Court first looks at whether the statute of limitations has run on Defendants claims. In terms of personal property, any action for the "taking, detaining, or injuring [of] any goods or chattels, including any actions for the specific



recovery of personal property,” must be made within 3 years. I.C. § 5-218. “The time when a cause of action accrues may be a question of law or a question of fact, depending upon whether any disputed issues of material fact exist.” *Reis v. Cox*, 104 Idaho 434, 438, 660 P.2d 46, 50 (1982). “Where there is no dispute over any issue of material fact regarding when the cause of action accrues, the question is one of law for determination by the court.” *Id.* (citations omitted).

On March 6, 2001, the McKinneys obtained a judgment and foreclosed the real property in Power County Case No. CV-00-00252. At that time, McKinneys exercised possession over all the property including real property, personal business property, and personal property. Any claim for conversion against the McKinneys ended on or about March 6, 2004. Even if that date is not correct, the U.S. Bankruptcy Court issued an order on May 14, 2004, which abandoned any personal property to D.M. and Shirley Thornhill.<sup>4</sup> Any claim for conversion of the personal property should have been made within 3 years of that date, but was not. However, Defendants argue that they are not alleging a conversion claim against McKinneys, Thornhill or any other predecessor to Plaintiff, but allege they have a direct conversion claim against Indian Springs, L.L.C., and Henesh. Defendants argue that their statute of limitations did not begin to run against Indian Springs, L.L.C., and Henesh until Plaintiffs exercised control over the property in 2009.<sup>5</sup>

The issue the Court must decide is whether when the conversion is once complete, does a subsequent transfer, even by way of foreclosure and Sheriff’s sale, allow the statute of

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<sup>4</sup> Defendants’ Motion to Dismiss filed March 31, 2009, Ex. G. The record also reflects that Anderson, through Recreational Properties A&B, LLC, made demand on Thornhills for return of the same list of business property and individual property in the storage unit on or before December 17, 2007, which shows the knowledge Defendants had of their claim for the personal property. Defendants’ Motion to Dismiss filed March 31, 2009, Exs. J & K.

<sup>5</sup> The record reflects that Plaintiff received a Sheriff’s Certificate of Sale on January 14, 2008, but did not actually obtain possession of the property until January 15, 2009.

limitations to begin running again? The Court concludes that it does not. “A cause of action for conversion accrues as soon as the property is wrongfully taken or retained.” *Freiberger v. American Triticale, Inc.*, 120 Idaho 239, 241, 815 P.2d 437, 439 (1991)(citations omitted).<sup>6</sup> “When the conversion is once complete, a subsequent wrongful transfer does not alter the running of the statute from the original conversion.” *Himoff Mach. Co. v. H & W Motor Sales, Inc.*, 256 F.2d 769, 771 (7th Cir., 1958)(citation omitted).

The New Jersey Supreme Court has stated:

We reject the alternative of treating subsequent transfers of a chattel as separate acts of conversion that would start the statute of limitations running anew. At common law, apart from the statute of limitations, a subsequent transfer of a converted chattel was considered to be a separate act of conversion. In his dissent, Justice Handler seeks to extend the rule so that it would apply even if the period of limitations had expired before the subsequent transfer. Nonetheless, the dissent does not cite any authority that supports the position that the statute of limitations should run anew on an act of conversion already barred by the statute of limitations. Adoption of that alternative would tend to undermine the purpose of the statute in quieting titles and protecting against stale claims. *Brown*, supra, s 4.3 at 38.

*O’Keeffe v. Snyder*, 83 N.J. 478, 503, 416 A.2d 862, 875 (1980).

In this case, the Defendants lost possession of the Indian Springs recreational area real and personal property on either March 6, 2001, when the McKinneys obtained a judgment and foreclosed the real property in Power County Case No. CV-00-00252 or on May 14, 2004 when the bankruptcy court delivered the property to Thornhills. Any conversion claim the Defendants had would have begun at that time. The statute of limitations has run and the Defendants are barred from asserting a new conversion claim against the Plaintiff because when the conversion is once complete, a subsequent transfer does not alter the running of the statute from the original conversion.

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<sup>6</sup> See also *Davidson v. Davidson*, 68 Idaho 58, 63, 188 P.2d 329, 332 (1947): “All the cases are agreed in this, that a right of action accrues in favor of the owner of goods as soon as they are wrongfully taken from his possession, or wrongfully converted.” (Citations omitted).

As an alternative ground, Plaintiff asserts that Defendants are precluded from their conversion claim by the doctrine of judicial estoppel. Essentially, Plaintiff asserts that Defendants have previously taken the legal position that all personal property at issue here is owned by Recreational Properties A&B, LLC (“Recreational Properties”), and cannot now assert that they have personal claims to that personal property. Judicial estoppel is an equitable doctrine, invoked at the court’s discretion, to prevent a party from taking one position in one proceeding and then attempting to change that position in a subsequent proceeding to its advantage.<sup>7</sup> The record clearly shows that in prior proceedings, including the case that resulted in the foreclosure of the real property in this case, Defendants have taken the position that all of the personal property is owned by Recreational Properties. Defendants cannot now take a contrary position in an attempt to recover any personal property as individuals.<sup>8</sup>

Because at least two legitimate bases exist for concluding that Defendants may not pursue their claims for conversion of any personal property, the Court need not reach the several additional grounds asserted by Plaintiff on this issue. Plaintiff’s Motion to Dismiss Defendants’ conversion claims, both in Defendants’ Original Counterclaim and Amended Counterclaim, is GRANTED.

2. Unjust Enrichment. Defendants’ claim for labor and effort on the property in years past is founded on the legal doctrine of unjust enrichment. In discussing the legal doctrine of unjust enrichment, the Idaho Court of Appeals stated:

The doctrine of unjust enrichment sounds in quasi-contract or implied-in-law contract. *Beco Constr. Co., Inc. v. Bannock Paving Co., Inc.*, 118 Idaho 463, 466, 797 P.2d 863,

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<sup>7</sup> *Indian Springs LLC, supra*, 147 Idaho at 748, 215 P.3d at 468; *Riley v. W.R. Holdings, LLC*, 143 Idaho 116, 121-22, 138 P.3d 316, 321-22 (2006).

<sup>8</sup> For the same reason, and because there is no evidence in this record to the contrary, there has been no showing the Everett and Marjorie Ells have ever claimed an interest in any of the personal property at issue, except the individual property that may be personal to them and be located in the mobile home and storage shed. Thus, any claims by Ells herein are dismissed.

866 (1990). The theory is based upon the defendant having received a benefit which would be inequitable to retain at least without compensating the plaintiff to the extent that retention of the benefit is unjust. *Id.* In order to establish the prima facie case for unjust enrichment, the plaintiff must show that there was: (1) a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff of the value thereof. *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 745, 710 P.2d 647, 655 (Ct.App.1985).

*Curtis v. Becker*, 130 Idaho 378, 382, 941 P.2d 350, 354 (Ct. App. 1997).

In *Beco Const. Co., Inc. v. Bannock Paving Co., Inc.*, 118 Idaho 463, 797 P.2d 863, (1990), a Construction company (“Beco”) brought an unjust enrichment action against a subcontractor. The district court held that existing Idaho law “fails to recognize a cause of action under either the theory of fraud or unjust enrichment where the alleged injured party has no relationship with the alleged injuring party.” *Id.* at 465-66, 797 P.2d at 865-66. Therefore, the district court concluded that Bannock Paving was entitled to summary judgment.

Beco argued on appeal that it should be allowed to recover under the theory of unjust enrichment for the benefit received by Bannock Paving from the set-aside contract even though it did not confer any benefit either directly or indirectly to the alleged unjustly enriched party. *Id.* at 466, 797 P.2d at 866.

The Idaho Supreme Court stated that:

Beco argues that the equitable principle of unjust enrichment does not require the plaintiff and the defendant to have any other relationship beyond the nexus that one party may not unjustly enrich itself at the expense of the other. Beco relies on *Smith v. Smith*, supra; *McKay Construction Co. v. Ada County Board of County Commissioners*, 96 Idaho 881, 883, 538 P.2d 1185 (1975); and *Hixon v. Allphin*, 76 Idaho 327, 333, 281 P.2d 1042 (1955); *Olsen v. Country Club Sports, Inc.*, 110 Idaho 789, 718 P.2d 1227 (Ct.App.1985), for this general proposition. However, in each of these cases the plaintiff and defendant had a contractual relationship or a claim to real property, which were the underlying reasons for the unjust enrichment or quasi contract claims between the parties.

...

In this case, Beco conferred no direct or indirect benefit on Bannock Paving. Beco and Bannock Paving had no contractual relationship. M-K awarded the contract. M-K and SBA decided that Bannock Paving could keep the contract even though it did not qualify for small business set-aside projects. Even if Bannock Paving had been excluded, the project documents did not require M-K to award the contract to Beco. Beco also admitted an error in its bid. Besides, SBA provides for criminal sanctions but no civil sanctions as such in cases where the low bidder does not qualify for an SBA set aside. This court continues to require for an unjust enrichment recovery that the plaintiff confer some benefit on the defendant which would be unjust for the defendant to retain.

*Id.* at 467, 797 P.2d at 867.<sup>9</sup>

In this case, similarly to *Beco*, Defendants did not confer a benefit upon Plaintiff because there is no evidence that such work was done while Plaintiff was in possession of the property, and because Defendants did not have a contractual relationship with Plaintiff. Plaintiff was a successor in interest to the first mortgage held by the Thornhills. Plaintiff received a civil Judgment, Decree of Foreclosure and Order of Sale (“Judgment”) which was rendered by Judge Ronald E. Bush, in the District Court for Power County in Case No. CV-2005-00305. The Judgment was recorded on November 27, 2007, as Power County Recorder’s Instrument No. 192994, and foreclosed the real property due to default of payment. In the Judgment, Judge Bush ordered that the mortgaged real property be sold at public auction by the Power County Sheriff and on January 14, 2008, Plaintiff purchased the real property at a public auction for \$436,179.73. Plaintiff did not actually take possession of the property until January 15, 2009.

At no time did Plaintiff have any type of contractual or business relationship with the Defendant in this case. Also, at no time did the Defendants confer a benefit upon the Plaintiff. The property was foreclosed, and unjust enrichment is not appropriate in this case. Thus, any claim for unjust enrichment is DISMISSED.

---

<sup>9</sup> See also *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 132 Idaho 754, 767, 979 P.2d 627, 640 (1999): “Neither of these two theories [quantum meruit and unjust enrichment] allows recovery by a subcontractor who lacks a contractual relationship directly with a property owner.”

3. Motion to Amend and to Include Thomas M. Henesh as a Counterdefendant. Since there is no legal foundation for any claims for the recovery of the business property or any labor and effort by Defendants on the property, there is no legal foundation for the Motion to Amend. Any allegations for conversion of business property in the Original and Amended Counterclaim are legally and factually insufficient. Also, there is no evidence or claim that Thomas M. Henesh, individually and personally, was acting in any way other than as the representative or owner of Indian Springs, LLC, a limited liability company. If there is no claim against Indian Springs, LLC, there can be no claim against Henesh personally. Therefore, the Court DENIES Defendants' Motion to Amend including the request to add Thomas M. Henesh as a counterdefendant.

4. Individual Property, Locks, Water and Power. The final issue is whether any claim continues for individual property owned by Defendants within the mobile home and/or storage shed. The Court has ordered, and then stayed, and then encouraged the Defendants on many occasions to remove their individual property from the mobile home and storage shed. Plaintiff has never claimed ownership of this individual property, and has not objected to Defendants obtaining possession of it. Since this decision concludes this case, as to the ownership and possession of all personal property, the Court now ORDERS Defendants to remove all individual property in the mobile home and/or storage shed by November 30, 2010. As previously ordered, Plaintiff's counsel, or a representative from Plaintiff's law firm, must be present at the time this removal takes place, and is ordered to video tape the removal so there is a record of what was present and what was taken. Anything not removed by November 30, 2010 will be forfeited by Defendants and can be disposed of by Plaintiff.

As to claims that Plaintiff removed locks belonging to Defendants on the well house and power box, the Court concludes, based on the foregoing, that such locks would have been business property subject to the same analysis contained above. The Order dismissing the Counterclaim encompasses the locks in question.

As to claims that Plaintiff has taken power and water owned and paid for by Defendants, the Court concludes that documents attached to the Defendants Original Counterclaim create a question of fact as to whether Defendants actually paid for power used by Plaintiff after January 15, 2009. Part of Exhibit A to the Original Counterclaim show billings from Idaho Power to Rosanna Anderson personally on January 26 and February 18, 2009, although it is not clear whether the billings relate to power used by Plaintiff in the operation of the business, to the mobile home (the ownership of which had not yet been resolved at that time), or some other property. There is also no evidence of actual payment of any bills for power used by Plaintiff.

Exhibits B and C to the Original Counterclaim reflect payments to the American Falls/Aberdeen Area Ground Water District in 2009, after Plaintiff took possession of the real property in question. However, those billings were to Recreational Properties.<sup>10</sup> Therefore, for the reasons stated above, Defendants have no legitimate claim for reimbursement of water expenses they did not personally incur, and such claims are DISMISSED.

Thus, the only issue now remaining in this case is whether Plaintiff is obligated to reimburse Defendants for the cost any power bills for electrical service to the property in possession of Plaintiff after January 15, 2009. Since this matter is to be tried to the Court, the Court concludes that the most effective way of disposing of this claim is to allow the parties 30 days in which to submit proof, by way of affidavit and supporting documentation, on this limited issue. Simultaneous submissions, if the matter not resolved by stipulation of the parties, will be

---

<sup>10</sup> It is also unclear where the water that was paid for was used and who used it.

to the Court no later than December 3, 2010. The Court will take this final matter under advisement at that time, issue a final decision, and render a judgment.

CONCLUSION

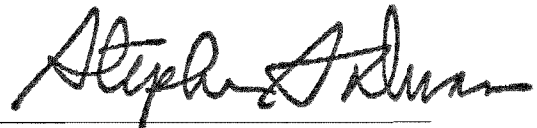
In conclusion, and for the reasons set forth above, the Court GRANTS the Plaintiff's Motion to Dismiss the Original Counterclaim, except as to the question of whether Plaintiff used electrical power allegedly paid for by Defendants after January 15, 2009. The Court DENIES Defendants' Motion to Amend the Original Counterclaim. The parties are directed to simultaneously submit proof on the sole issue of whether Plaintiff obtained the benefit of electrical power paid for by Defendants after January 15, 2009, no later than December 3, 2010, as set forth herein.

Further, Defendants are ORDERED to remove any individual property from the mobile home and/or storage shed, no later than November 30, 2010, consistent with the conditions set forth herein.

All hearings of any kind on this case are hereby vacated.

IT IS SO ORDERED.

DATED this 2nd day of November, 2010.



STEPHEN S. DUNN  
District Judge



|   |           |
|---|-----------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |           |
| FILED 11-30-10                            | TIME 2:44 |
| CHRISTINE STEINLICHT, CLERK               |           |
| BY <i>[Signature]</i>                     | DEPUTY    |

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS I.L.C.,  
An Idaho Limited Liability Company,

Plaintiffs,

-vs-

TERRY and ROSANNA ANDERSEN,  
Husband and wife; EVERETT AND  
MARGIE ELLS, husband and wife; and  
any and all individuals claiming any  
possessory interest by or through him.  
Defendant.

Case No. CV-2009- 66

ORDER ON DEFENDANT'S MOTION  
FOR ENLARGEMENT OF TIME

In the Court's Memorandum Decision of November 2, 2010 Defendants were required to remove all personal property still on the Indian Springs premises, in the mobile home and/or storage shed, no later than November 30, 2010, subject to the same conditions imposed by the Court in previous orders. On November 29, 2010 Defendants filed a Motion for Enlargement of Time, seeking more time to remove their personal property for two primary reasons, a heavy snowfall that occurred in the area in late November and the fact that some property of Indian Springs blocked Defendants access to the mobile home and/or storage shed. Upon short notice, and by stipulation of the parties, the Court heard the Motion by telephone on November 29, 2010, counsel for both parties appearing. Plaintiff objected to the Motion but conceded that Mr.

Henesh was out of state and would not be available to facilitate any removal of Defendant's personal property on November 30, 2010.

The Court, having considered the situation, makes the following observations. It is true that Defendants were given until November 30, 2010 to remove their personal property. It is of concern to the Court that Defendants apparently made no effort to arrange for that removal from the date of the Court's order, November 2, 2010, until November 29, 2010. Nevertheless, the Court, by agreement, takes judicial notice of the fact that a severe winter storm occurred no later than November 23, 2010, which would have made removal very difficult, if not impossible. The area where the personal property is located will likely be difficult to access for some time. On the other hand, the Court has encouraged the Defendants on many prior occasions over the preceding 15 months to remove their property but they have failed to do so.

Therefore, the Motion is GRANTED, subject to the following conditions.

1) As soon as access to the mobile home and storage shed is reasonably possible, i.e., the snow has melted and the ground is passable, and any obstructions to access due to Plaintiff's property, such as tables, irrigation pipe, and the like, has been removed by Plaintiff (at Plaintiff's expense), then the Plaintiff, through counsel, is to advise the Defendants, through counsel, in writing, that the access to the mobile home and storage shed is reasonably possible. Plaintiff's counsel is directed to confirm, by telephone or other reasonable means, that the written notice has been received by Defendant's counsel.

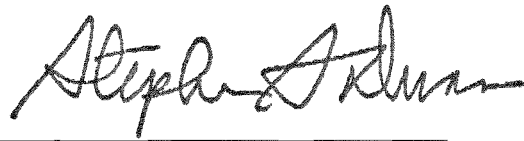
2) Within seven (7) days of the receipt of the written notice referred to in paragraph 1, Defendants are required to remove all personal property from the mobile home and/or storage shed, unless all parties agree to a later time. Removal shall be arranged by counsel for Defendants contacting counsel for Plaintiffs and making arrangements for the date and time of

the removal. The conditions previously imposed for removal shall continue, i.e., a) the Court directs that Indian Springs shall be physically represented by legal counsel, at the time Defendants obtain their personal property, but Mr. Henesh may not be present; b) the Court further directs that counsel for Plaintiff video tape and/or photograph the inside of the shed and the mobile home, prior to Defendants removing any personal property from those locations, and to keep a written list of all personal property obtained by Defendants; and c) if the parties disagree on whether certain personal property is actually owned by Defendants, counsel for Plaintiff shall retain all such property in a single location, photograph and make a written list of such property, and the matter of ownership shall be taken up at a later time.

Failure of the Defendants to remove their personal property in accordance with this Order shall constitute a waiver and forfeiture of said property and can be disposed of by Plaintiff.

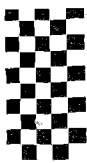
IT IS SO ORDERED.

DATED this 30<sup>th</sup> day of November, 2010.

A handwritten signature in black ink, appearing to read "Stephen S. Dunn", written over a horizontal line.

STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norman Reece, Esq.



Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Tel: (208) 233-0128  
Fax: (208) 233-4895  
Idaho State Bar No. 3898

Attorney for Defendants/  
Counterclaimants

|   |           |
|---|-----------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |           |
| FILED 12-2-10                             | TIME 4:51 |
| CHRISTINE STEINLICHT, CLERK               |           |
| BY <i>[Signature]</i>                     | DEPUTY    |

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company,

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants.

Case No. CV-2009-066

**AFFIDAVIT OF TERRY ANDERSEN**

STATE OF IDAHO )  
 ) ss.  
County of Bannock )

Terry Andersen, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years and am competent to testify. I have personal knowledge of the facts attested to herein.

2. This submission is in response to and in compliance with the Court's order as set forth in its "Memorandum Decision and Order re: Plaintiff's Motion to Dismiss and Defendants' Motion to Amend," filed November 2, 2010.

3. Specifically, this submission is to establish the damages Defendants have incurred as a result of Plaintiff's use of electrical service to the property which is the subject of this litigation, said use occurring after January 15, 2009.

4. Attached as Exhibit A are true and correct copies of billing statements I received from Idaho Power for electrical service to the property which is the subject of this litigation. These statements range from September 20, 2007 through December 22, 2008. These statements show an average electrical bill of \$17.04 in the months preceding January 2009.

5. Attached as Exhibit B is a true and correct copy of a billing statement I received from Idaho Power for electrical service to the property which is the subject of this litigation. Said statement is for service from December 22, 2008 to January 22, 2009, and reflects a dramatic increase in our power bill for the additional usage by Plaintiff after January 15, 2009.

6. After January 15, 2009, our electrical bills continued to reflect greatly increased usage of electrical power to the property by Plaintiff. Attached as Exhibit C are the Idaho Power billings for January 2009 and February 2009.

7. We finally paid \$228.97 to Idaho Power on March 5, 2009. A true and correct copy of this payment is attached as Exhibit D. This payment was for electrical services from December 22, 2008 through February 2009.

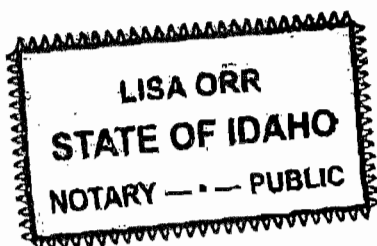
8. We incurred no further expenses for electrical power to the property after February 2009.


9. Therefore, the payment we made of \$228.97 on March 5, 2009, reflects two pay periods: December 2008 to January 2009 and January 2009 to February 2009. Since our usage of electrical power during any given month, as shown in Exhibit A, averaged \$17.04, the most we would have paid for electrical service during the December 2008 to February 2009 time period would have been \$17.04 per month. Subtracting \$34.08 (two months at \$17.04) for the two pay periods involved, our damages for electrical use by the Plaintiff for which we paid would come to \$194.89 (\$228.97 - \$34.08), plus pre-judgment interest.

10. Attached as Exhibit E is a true and correct copy of a letter we sent to Idaho Power protesting the bill we paid. The contents of that letter are incorporated herein as if set forth in full.

  
TERRY ANDERSEN

SUBSCRIBED AND SWORN to before me this 2nd day of December, 2010.

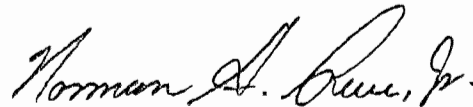


  
Notary Public for Idaho  
Residing At: Chubbuck  
My Commission Expires: 04-28-2011

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2010, I served a true and correct copy of the foregoing AFFIDAVIT OF TERRY ANDERSEN, by depositing the in the United States mail, at Pocatello, postage pre-paid, in an envelope addressed to:

Lane V. Erickson, Esq.  
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.  
P.O. Box 1391  
Pocatello, ID 83204-1391



Norman G. Reece, Jr.

Exhibit A




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 Or call (208) 388-2323 (Treasure Valley)  
 or (800) 488-6181. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 10/24/2007  
 Print Date: 10/24/2007

Page 2

Service Agreement No: 6630305510

Next Read Date: 11/21/2007

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 0183074278   | 09/20/07 10/22/07      | 32             | Regular      | 37976                   | 38050   | 1              | 7        |

|                              |   |              |
|------------------------------|---|--------------|
| Commercial Rate Schedule 107 | 09/20/2007 - 10/22/2007 32 days               |              |
|                              | Service Charge                                | \$4.0        |
|                              | Non-Summer Energy Charge @ \$0.065143 per kWh | \$4.6        |
|                              | PCA @ \$0.002419 per kWh                      | \$0.1        |
|                              | Conservation Program Funding Charge           | \$0.1        |
|                              | <b>Current Charges - Electric Service</b>     | <b>\$8.9</b> |

|             |                              |               |
|-------------|------------------------------|---------------|
| Adjustments | Service Establishment Charge | \$20.0        |
|             | <b>Current Adjustments</b>   | <b>\$20.0</b> |

CR = Credit kWh, KiloWatt-hour, PCA = Power Cost Adjustment, kWh = KiloWatt, BLD = Basic Load Capacity, GC = General

Your Electric Use Pattern

Aug kWh  
Per Day





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 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 11/26/2007  
 Print Date: 11/26/2007

Service Agreement No: 0030305510

Next Read Date: 12/21/2007

Service Location: 00831E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter<br>Number | Service Period |          | Number<br>of Days | Reading<br>Type | Meter Readings |         | Meter<br>Constant | kWh<br>Used |
|-----------------|----------------|----------|-------------------|-----------------|----------------|---------|-------------------|-------------|
|                 | From           | To       |                   |                 | Previous       | Current |                   |             |
| 01856179278     | 10/22/07       | 11/21/07 | 30                | Regular         | 38050          | 38118   | 1                 | 68          |

|               |   |              |
|---------------|---|--------------|
| Commercial    | 10/22/2007 - 11/21/2007 30 days               |              |
| Rate Schedule | Service Charge                                | \$4.0        |
| 107           | Non-Summer Energy Charge @ \$0.065143 per kWh | \$4.4        |
|               | PCA @ \$0.002419 per kWh                      | \$0.1        |
|               | Conservation Program Funding Charge           | \$0.1        |
|               | <b>Current Charges - Electric Service</b>     | <b>\$8.7</b> |

CR = Credit, kWh = Kilowatt-hour, PCA = Power Cost Adjustment, kW = Kilowatt, BLD = Basic Load Capacity, G = Generation

Your Electric  
Use Pattern




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 or (800) 489-6161. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8526504573  
 Billing Date: 12/26/2007  
 Print Date: 12/26/2007

Page 1

| Due Date   | Please Pay |
|------------|------------|
| 01/11/2008 | \$8.86     |

### Account Activity

|                        |               |
|------------------------|---------------|
| Previous Balance       | \$8.72        |
| Payments - Thank You   | \$8.72        |
| Balance Forward        | \$0.00        |
| Current Charges        | \$8.86        |
| <b>Account Balance</b> | <b>\$8.86</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Returned checks may be resubmitted without penalty for payment. Credit card payments are processed with a charge of \$2.00 fee.

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Please select one of the options below for your payment. Please send with all when paying at a pay station.





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 Or call (208) 388-2329 (Treasure Valley)  
 or (800) 488-6161. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 01/25/2008  
 Print Date: 01/26/2008

Page 2

Service Agreement No: 6630305510

Next Read Date: 02/21/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

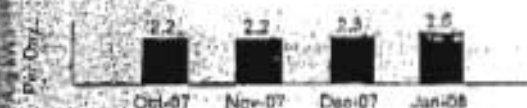
| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 02586102218  | 12/21/07 01/23/08      | 33             | Regular      | 35188                   | 38271   | 1              | 83       |

Commercial 12/21/2007 - 01/23/2008 33 days

|                                    |   |        |
|------------------------------------|---|--------|
| Rate Schedule                      | Service Charge                                | \$4.00 |
| 107                                | Non-Summer Energy Charge @ \$0.065143 per kWh | \$5.41 |
|                                    | PCA @ \$0.002419 per kWh                      | \$0.20 |
|                                    | Conservation Program Funding Charge           | \$0.14 |
| Current Charges - Electric Service |   | \$9.75 |

CR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

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 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 02/25/2008  
 Print Date: 02/25/2008

Page 1

Due Date  
 03/11/2008

Please Pay  
 \$9.20

### Account Activity

|                        |               |
|------------------------|---------------|
| Previous Balance       | \$9.75        |
| Payments - Thank You   | \$9.75        |
| Balance Forward        | \$0.00        |
| Current Charges        | \$9.20        |
| <b>Account Balance</b> | <b>\$9.20</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

### Preferred Pay

Save time with PreferredPay and have your Idaho Power bill automatically deducted from your checking account. That's one less check to write each month and you still receive a statement for your records. Call our Customer Service Center for an application or visit our Web site at [www.idahopower.com](http://www.idahopower.com)

*Paid 3/2/08  
 CKB 1434 RG*

Detach and retain the portion below with your payment. Please bring this bill when paying at a pay station.



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Or call (208) 388-2323 (Treasure Valley)  
or (800) 488-4151. Se habla español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 03/25/2008  
Print Date: 03/25/2008

Page 2 of

www.idahopower.com

Service Agreement No: 6630305510

Next Read Date: 04/22/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 01606179276  | 02/21/08       | 03/21/08 | 29             | Regular      | 38345          | 38656   | 1              | 310      |

| Billing kW | BLC |
|------------|-----|
| 1          | 0   |

|                              |   |                |
|------------------------------|---|----------------|
| Commercial Rate Schedule 107 | Prorated 02/22/08 - 02/29/08 8 days + 6.98    |                |
|                              | Service Charge                                | \$1.10         |
|                              | Non-Summer Energy Charge @ \$0.065143 per kWh | \$5.57         |
|                              | PCA @ \$0.002419 per kWh                      | \$0.21         |
|                              | Conservation Program Funding Charge           | \$0.10         |
|                              | Prorated 03/01/08 - 03/21/08 21 days + 19.26  |                |
|                              | Service Charge                                | \$2.90         |
|                              | Non-Summer Energy Charge @ \$0.069225 per kWh | \$15.54        |
|                              | PCA @ \$0.002419 per kWh                      | \$0.54         |
|                              | Conservation Program Funding Charge           | \$0.28         |
|                              | <b>Current Charges - Electric Service</b>     | <b>\$26.24</b> |

G = Credit kWh \* Kilowatt-Hour PCA = Power Cost Adjustment kWh \* Kilowatt BLC = Basic Load Capacity G = Generation

Your Electric Use Pattern







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 or (800) 486-6151. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:20 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 04/24/2008  
 Print Date: 04/24/2008

Page 1 of 1

ps 5/20/08  
 ck #1463

|            |            |
|------------|------------|
| Due Date   | Please Pay |
| 05/09/2008 | \$12.64    |

# Account Activity

|                        |                |
|------------------------|----------------|
| Previous Balance       | \$26.24        |
| Payments - Thank You   | \$26.24        |
| Balance Forward        | \$0.00         |
| Current Charges        | \$12.64        |
| <b>Account Balance</b> | <b>\$12.64</b> |

Please Note: Any unpaid balance will be assessed a monthly charge of one percent (1%) for Idaho customers. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

## Green Power



### Harness the Wind: Go Green!

Join Idaho Power customers who are supporting new, renewable power from resources such as wind or solar. Enroll on the Energy Center Web page at [www.idahopower.com](http://www.idahopower.com) or call our Customer Service Center.



an EXCEL company

www.idahopower.com

Questions? Contact us at:  
 PO BOX 79, Boise, ID 83707  
 Or call (208) 388-2325 (Treasure Valley)  
 or (800) 488-6151. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 6528504873  
 Billing Date: 06/24/2008  
 Print Date: 06/24/2008

Page 2 of

Service Agreement No: 6830305510

Next Read Date: 07/22/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 01615173276  | 05/21/08       | 06/20/08 | 30             | Regular      | 38805          | 39021   | 1              | 136      |

| Billing kW | BLC |
|------------|-----|
| 1          | 0   |

Commercial  
 Rate Schedule  
 107

Promoted 05/22/08 - 05/31/08 10 days - 4.65

Service Charge

\$1.33

Non-Summer Energy Charge @ \$0.069225 per kWh

\$3.14

PCA @ \$0.002419 per kWh

\$0.11

Conservation Program Funding Charge

\$0.07

Promoted 06/01/08 - 06/20/08 20 days - 9.94

Service Charge

\$2.67

Summer Energy Charge 0-300 kWh @ \$0.070280 per kWh

\$4.37

PCA @ \$0.007864 per kWh

\$0.71

Energy Efficiency Services

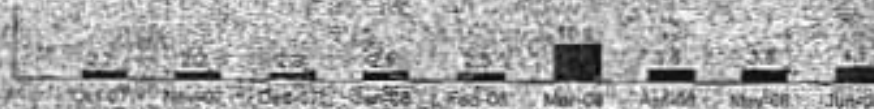
\$0.19

Current Charges - Electric Service

\$14.59

kWh Credit: kWh = Kilowatt-Hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

Your Electric  
 Use Pattern



pd  
 7-3-08  
 ck #1480  
 Ra





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Questions? Contact us at:  
 PO BOX 70, Boise, ID 83707.  
 Or call (208) 388-2323 (Tremaine Valley)  
 or (800) 489-4151. So happy to help!  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 07/24/2008  
 Print Date: 07/24/2008

pd 8/7/08  
 CR #149

| Due Date   | Please Pay |
|------------|------------|
| 08/08/2008 | \$17.93    |

### Account Activity

|                        |                |
|------------------------|----------------|
| Previous Balance       | \$1.95         |
| Payments- Thank You    | \$1.95         |
| Balance Forward        | \$0.00         |
| Current Charges        | \$17.93        |
| <b>Account Balance</b> | <b>\$17.93</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a billing will be applied to future billings or can be refunded upon customer request. Returned checks may be resubmitted electronically for 30 days. Checks remaining unpaid will be subject to a \$25 fee.

### Learn, Reduce & Save With New ENERGY Tools

Learn about your energy use in your home or business and get tips on how to save energy. Become your own Account Manager with ENERGY Tools now available at the E-services area of [www.idahopower.com](http://www.idahopower.com)

Please attach and affix the portion below with your payment. If this bill is not being paid by a pay station.


[www.idahopower.com](http://www.idahopower.com)

Questions? Contact us at:  
 PO BOX 70, Boise, ID 83707.  
 Or call (208) 388-2323 (Treasure Valley)  
 or (800) 488-6151. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 08/22/2008  
 Print Date: 08/22/2008

**Due Date**  
**09/09/2008**

**Please Pay**  
**\$19.35**

### Account Activity

|                        |                |
|------------------------|----------------|
| Previous Balance       | \$17.93        |
| Payments - Thank You   | \$17.93        |
| Balance Forward        | \$0.00         |
| Current Charges        | \$19.35        |
| <b>Account Balance</b> | <b>\$19.35</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a billing will be applied to future billings or can be refunded upon customer request. Returned checks may be resubmitted electronically for payment. Checks returned unpaid will be charged a \$20 fee.

### Learn, Reduce & Save With New ENERGY Tools

Learn about your energy use in your home or business and get tips on how to save energy. Become your own Account Manager with **ENERGY Tools** now available at the E-services area or [www.idahopower.com](http://www.idahopower.com).

*Handwritten:*  
 Pd \$19.35  
 9-15-08  
 (A. B. L.)

Please print and return the postage paid with your payment or to the address below when paying at a pay station.



www.idahopower.com

Questions? Contact us at:  
 PO BOX 70, Boise, ID 83707  
 Or call (208) 388-2323 (Treasure Valley)  
 or (800) 488-6151. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 09/23/2008  
 Print Date: 09/23/2008

Service Agreement No: 6630305510

Next Read Date: 10/21/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 016106179275 | 08/20/08 09/19/08      | 30             | Regular      | 39387                   | 39624   | 1              | 237      |

| Billing kW | BLC |
|------------|-----|
| 1          | 0   |

Commercial 08/20/2008 - 09/19/2008 30 days

|                   |   |         |
|-------------------|---|---------|
| Rate Schedule 107 | Service Charge  | \$4.00  |
|                   | Non-Summer Energy Charge @ \$0.070269 per kWh 19 days       | \$10.55 |
|                   | Summer Energy Charge 0-300 kWh @ \$0.070269 per kWh 11 days | \$6.11  |
|                   | PCA @ \$0.007864 per kWh                                    | \$1.86  |
|                   | Energy Efficiency Services                                  | \$0.43  |

Current Charges - Electric Service **\$22.93**

CR - Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

Your Electric Use Pattern







An BGE Company

www.idahopower.com

Questions? Contact us at:  
PO BOX 70, Boise, ID 83707.  
Or call (208) 388-2323 (Treaty Valley)  
or (800) 488-6151. Se habla español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 11/24/2008  
Print Date: 11/24/2008

Page 2 of 2

Service Agreement No: 6630305510

Next Read Date: 12/22/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 016186179278 | 10/21/08       | 11/20/08 | 30             | Verified     | 39865          | 40247   | 1              | 382      |

| Billing kW | SLC |
|------------|-----|
| 2          | 0   |

Commercial  
Rate Schedule  
107

10/21/2008 - 11/20/2008 30 days

Service Charge ..... \$4.00

Non-Summer Energy Charge @ \$0.070269 per kWh ..... \$26.84

PCA @ \$0.007864 per kWh ..... \$3.00

Energy Efficiency Services ..... \$0.60

**Current Charges - Electric Service \$34.44**

CR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt SLC = Basic Load Capacity G = Generation

Your Electric  
Use Pattern





www.idahopower.com

Questions? Contact us at:  
PO BOX 70, Boise, ID 83707.  
Or call (208) 389-2323 (Treasure Valley)  
or (800) 486-6151. Go hablo español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 12/24/2008  
Print Date: 12/24/2008

Page 2 of 2

Service Agreement No: 5830305510

Next Read Date: 01/22/2009

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID

25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 019188175278 | 11/20/08 12/22/08      | 32             | Special      | 40247                   | 40547   | 1              | 300      |

| Billing kW | BLC |
|------------|-----|
| 2          | 0   |

Commercial  
Rate Schedule  
107

11/20/2008 - 12/22/2008 32 days

Service Charge

\$4.00

Non-Summer Energy Charge @ \$0.070269 per kWh

\$21.08

PCA @ \$0.007864 per kWh

\$2.36

Energy-Efficiency Services

\$0.49

Current Charges - Electric Service

\$27.93

C.R. = Credit; kWh = Kilowatt hour; PCA = Power Cost Adjustment; kW = Kilowatt; BLC = Basic Load Capacity; G = Generation

Your Electric  
Use Pattern

Exhibit     B



Questions? Contact us at:  
PO BOX 70, Boise, ID 83707  
Or call (208) 388-2323 (Treasure Valley)  
or (800) 469-8161. Se habla español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 01/26/2009  
Print Date: 01/27/2009

Page 2 of 2

www.idahopower.com

Service Agreement No: 0530305510

Next Read Date: 02/20/2009

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 070100174720 | 12/23/08       | 01/22/09 | 31             | Verified     | 40547          | 42891   | 1              | 2344     |

| Billing kW | BLC |
|------------|-----|
| 4          | 0   |

12/22/2008 - 01/22/2009 31 days

|   |                 |
|---|-----------------|
| Service Charge                                | \$4.00          |
| Non-Summer Energy Charge @ \$0.070289 per kWh | \$164.71        |
| PCA @ \$0.007864 per kWh                      | \$18.43         |
| Energy Efficiency Services                    | \$3.15          |
| <b>Current Charges - Electric Service</b>     | <b>\$190.29</b> |

|                            |               |
|----------------------------|---------------|
| Late Payment Charge        | \$0.27        |
| <b>Current Adjustments</b> | <b>\$0.27</b> |

CR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

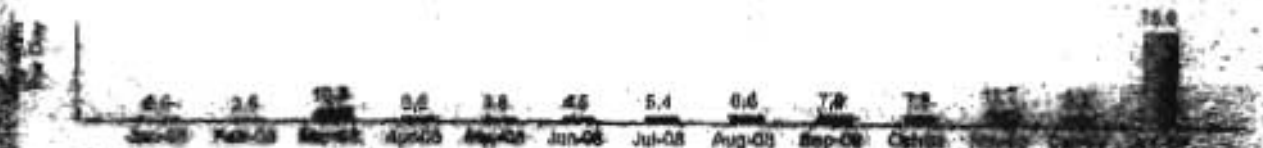


Exhibit     C





www.idahopower.com

Questions? Contact us at:  
 P.O. BOX 70, Boise, ID 83707.  
 Or call (208) 388-2323 (Tremaine Valley)  
 or (800) 483-6161. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 01/26/2009  
 Print Date: 01/27/2009

Page 1 of 1

**Due Date**  
 02/11/2009

**Please Pay**  
 \$218.49

### Account Activity

|                              |                 |
|------------------------------|-----------------|
| Previous Balance .....       | \$27.93         |
| Payments - Thank You .....   | \$0.00          |
| Balance Forward .....        | \$27.93         |
| Total Adjustments .....      | \$0.27          |
| Current Charges .....        | \$190.29        |
| <b>Account Balance</b> ..... | <b>\$218.49</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a refunding will be applied to future billings or can be refunded upon customer request. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

Learn, Reduce & Save  
 With New  
 ENERGY Tools

Learn about your energy use in your home or business and get tips on how to save energy. Become your own Account Manager with **ENERGY Tools** now available at the E-services area of [www.idahopower.com](http://www.idahopower.com).



Consider joining Idaho Power in supporting Project Share, a valuable community service that uses voluntary contributions to assist individuals and families who need help paying their energy bills during the winter heating season. To make a pledge, visit our Web site ([www.idahopower.com](http://www.idahopower.com)) or mark the appropriate box on the back of the pay stub.

Detach and mail the portion with your payment. Please bring what's left when paying at a meter station.



www.idahopower.com

Questions? Contact us at:  
PO BOX 70, Boise, ID 83707  
Or call (208) 369-2323 (Treasure Valley)  
or (800) 485-8151. So habla español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 02/18/2009  
Print Date: 02/18/2009

Page 1 of 2

Due Date  
03/05/2009

Please Pay  
\$228.97

### Account Activity

|                        |                 |
|------------------------|-----------------|
| Previous Balance       | \$218.49        |
| Payments - Thank You   | \$27.93 C       |
| Balance Forward        | \$190.56        |
| Current Charges        | \$38.41         |
| <b>Account Balance</b> | <b>\$228.97</b> |

*Handwritten notes: "W/ letter to Probate" and "Paid 3/4/09 Chk 1217 A+B LLC"*

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a billing will be applied to future billings or can be refunded upon customer request. Returned checks may be reinitiated electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

### Important Changes to Your Rates

The Idaho Public Utilities Commission approved an increase of 0.42 percent in your base electricity rates effective February 1, 09, and changes to rate design that further promote energy efficiency and conservation. For more information, go to [www.idahopower.com/mychenvu](http://www.idahopower.com/mychenvu)

The amount due includes a past due balance. If you have already remitted payment, thank you. If not, please remit payment to ensure it is received by the due date. Thank you.

### Preferred Pay

Save time with Preferred Pay and have your Idaho Power bill automatically deducted from your checking account. That's one less check to write each month, and you still receive a statement for your records. Call our Customer Service Center for an application or visit our Web site at [www.idahopower.com](http://www.idahopower.com).

Please detach and return this portion below with your payment. Please bring or fax this portion paying a bill, rather than mail.

Exhibit     D

WESTERN UNION  
 RINLEYS & 000000  
 POCATELLO, ID  
 18640 POWER NEW  
 2236897 0609 03/05/09 11:56AM 064 014100  
 CURRENCY: USD  
 8528249731  
 01 CHECK PP \$228.97 CASH PD \$0.00  
 01 STATEMENT \$228.97 TOTAL PD \$228.97  
 CHANGE DUE \$0.00

IF YOU DO NOT HAVE YOUR BILLING STATEMENT, COMPLETE SHADED AREA  
 SI USTED NO TIENE LA CUENTA DE CARGO, LLENE LOS DATOS SOLICITADOS EN EL ÁREA GRIS

Account Number (or cell phone number if not required):  
 Número de cuenta (o el número del teléfono celular cuando correspondan)

Billing Name:  
 El nombre de quién está la cuenta de cargo

Address:  
 Dirección

Phone ( )  
 Número de Teléfono

CUSTOMER ACCEPTS ALL POSTED TERMS AND CONDITIONS - SEE REVERSE FOR ALL TERMS AND CONDITIONS.

EL CLIENTE ACEPTA TODOS LOS TÉRMINOS Y TODAS LAS CONDICIONES QUE SE HAN INDICADO - FAVOR DE LEER LOS TÉRMINOS Y LAS CONDICIONES QUE SE ENCUENTRAN AL REVERSO DE ESTE FORMULARIO.

FOR USE WITH ELECTRONIC CHECK TRANSACTION ONLY:

SOLAMENTE PARA TRANSACCIONES DE CHEQUE ELECTRÓNICO:

"I authorize the biller or its agent to convert my check to a draft or an electronic funds transfer and to debit my account for the amount of the transaction."

Autorizo a la compañía que efectúa el cobro o a sus agentes a convertir mi cheque en giro o en transferencia electrónica de fondos y a debitar de mi cuenta el importe correspondiente a esta transacción.

Am. Paid \$  
 Importe pagado

Signature X  
 Firma

ELECTRONIC CHECK - A SAFER & MORE SECURE WAY TO PAY  
 CHEQUE ELECTRÓNICO - UNA MANERA MÁS CONFIBLE Y MÁS SEGURA DE HACER PAGOS

CUSTOMER COPY  
 COPIA DEL CLIENTE  
 SRPSPR01 (REV 0009)  
 CVP2810

**Exhibit E**

*File Copy*

## IDAHO POWER

## PROTEST OF BILL and LETTER OF DEMAND

I am paying this bill, but I dispute it. It appears there has been an excessive drain on the January power that has nothing to do with a radio and a few lights. This far exceeds any previous bill we have ever had on the home. Beyond that, I believe Idaho Power owes us in the amount of \$3,358.42 plus associated damages. I am filing this letter with you and also with PUC to detail the claim.

Idaho Power disconnected power from the transformer and removed the meter. The box was found smashed as well. This is believed to have occurred on or about October 6, 2004. A Denise McKinney claimed she had the rights, however, as you will find in the attached news articles and letter to the editor, she had no rights and the court has since been found to have blundered badly. The partnership Idaho Power records shows as the customer from July, 1996, had no obligation to McKinney. When the home was returned to us by the court, we inquired of Idaho Power what was needed to re-install the power. We paid \$2,383.02 in supplies and \$40.00 for a permit from Idaho Division of Building Safety (Receipt 3443879) dated 10/3/2007 for reinstallation of power for account # 3294640506 to the transformer. Prior to that we paid the fee and reconnected the power to the garage (account # 1002773139), which was again cut off at McKinney's request.

In October of 2007, we followed all the instructions Idaho Power told us to do to reconnect the home (account # 3294640506). The final inspection by Steve Thompson and permits were all in place and given to Idaho Power with the number of the right of way identified. When the American Falls office of Idaho Power was instructed to complete the job, the engineer (Anderson?) hedged and said he didn't know that he could do that. We understand Mr. Anderson consulted with Thornhill and his good friend, Bob Phelps (a former Idaho Power employee) and others to come to this conclusion. We received a letter from ID Power's Boise attorneys (letter should be on file, but will furnish upon request) stating they could not get permission from McKinney to come on the land and make the installation.

I am attaching copies of headline news and letter regarding the McKinney's failed attempt to auction the land before the end of her believed right of redemption period after she was foreclosed on. McKinney had no claim on the property and had held it on a sheriff's deed gotten by default against parties who did not own the property. McKinney (with help from Phelps?) ripped out or geri-rigged electrical connections and cut water lines to the 2 occupied homes, before the sheriff's department warned her she would go to jail if she did any more damage. Then she ordered the power be cut off. We have assumed and paid the bill since that time. I consulted with the Idaho Power people and was informed that everything to the big breaker box belonged to Idaho Power, and anything from that box was ours to use as we chose. We chose to hook the house to that meter which was on the parcel on which the house resides. This added another \$915.00 to our expenses in getting power that should never have been disconnected in the first place.

It apparently was very disturbing to Mr. Phelps (who passes the home frequently) to see lights on. So, we got a call from the engineer claiming the power was not hooked

Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Tel: (208) 233-0128  
Fax: (208) 233-4895  
Idaho State Bar No. 3898

Attorney for Defendants/  
Counterclaimants

DISTRICT COURT  
SIXTH JUDICIAL DISTRICT

FILED 12-2-10 TIME 4:51  
CHRISTINE STEINLICHT, CLERK  
BY *[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company,

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants.

Case No. CV-2009-066

**AFFIDAVIT OF ROSANNA  
ANDERSEN**

STATE OF IDAHO    )  
                              ) ss.  
County of Bannock    )

Rosanna Andersen, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years and am competent to testify. I have personal knowledge of the facts attested to herein.
2. This submission is in response to and in compliance with the Court's order as set forth in its "Memorandum Decision and Order re: Plaintiff's Motion to Dismiss and Defendants' Motion to Amend," filed November 2, 2010.
3. Specifically, this submission is to establish the damages Defendants have incurred as a result of Plaintiff's use of electrical service to the property which is the subject of this litigation, said use occurring after January 15, 2009.
4. Attached as Exhibit A are true and correct copies of billing statements I received from Idaho Power for electrical service to the property which is the subject of this litigation. These statements range from September 20, 2007 through December 22, 2008. These statements show an average electrical bill of \$17.04 in the months preceding January 2009.
5. Attached as Exhibit B is a true and correct copy of a billing statement I received from Idaho Power for electrical service to the property which is the subject of this litigation. Said statement is for service from December 22, 2008 to January 22, 2009, and reflects a dramatic increase in our power bill for the additional usage by Plaintiff after January 15, 2009.
6. After January 15, 2009, our electrical bills continued to reflect greatly increased usage of electrical power to the property by Plaintiff. Attached as Exhibit C are the Idaho Power billings for January 2009 and February 2009.



7. We finally paid \$228.97 to Idaho Power on March 5, 2009. A true and correct copy of this payment is attached as Exhibit D. This payment was for electrical services from December 22, 2008 through February 2009.

8. We incurred no further expenses for electrical power to the property after February 2009.

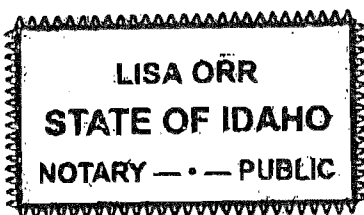
9. Therefore, the payment we made of \$228.97 on March 5, 2009, reflects two pay periods: December 2008 to January 2009 and January 2009 to February 2009. Since our usage of electrical power during any given month, as shown in Exhibit A, averaged \$17.04, the most we would have paid for electrical service during the December 2008 to February 2009 time period would have been \$17.04 per month. Subtracting \$34.08 (two months at \$17.04) for the two pay periods involved, our damages for electrical use by the Plaintiff for which we paid would come to \$194.89 (\$228.97 - \$34.08), plus pre-judgment interest.

10. Attached as Exhibit E is a true and correct copy of a letter we sent to Idaho Power protesting the bill we paid. The contents of that letter are incorporated herein as if set forth in full.



ROSANNA ANDERSEN

SUBSCRIBED AND SWORN to before me this 2nd day of December, 2010.



Notary Public for Idaho

Residing At: Chubbuck

My Commission Expires: 04-28-2011

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2010, I served a true and correct copy of the foregoing AFFIDAVIT OF ROSANNA ANDERSEN, by depositing the in the United States mail, at Pocatello, postage pre-paid, in an envelope addressed to:

Lane V. Erickson, Esq.  
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.  
P.O. Box 1391  
Pocatello, ID 83204-1391

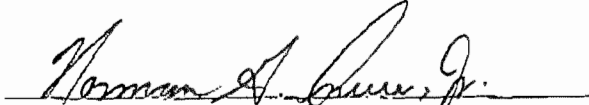
  
Norman G. Reece, Jr.

Exhibit     A



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Questions? Contact us at:  
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Or call (208) 388-2323 (Treasure Valley)  
or (800) 498-6151. Se habla español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 10/24/2007  
Print Date: 10/24/2007

Page 2

Service Agreement No: 5630305510

Next Read Date: 11/21/2007

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 018-861-9278 | 09/20/07       | 10/22/07 | 32             | Regular      | 67976          | 38050   | 1              | 72       |

Commercial 09/20/2007 - 10/22/2007 32 days

|               |   |        |
|---------------|---|--------|
| Rate Schedule | Service Charge                                | \$4.00 |
| 107           | Non-Summer Energy Charge @ \$0.065143 per kWh | \$4.69 |
|               | PCA @ \$0.002419 per kWh                      | \$0.17 |
|               | Conservation Program Funding Charge           | \$0.13 |

**Current Charges - Electric Service \$8.99**

|             |                              |         |
|-------------|------------------------------|---------|
| Adjustments | Service Establishment Charge | \$20.00 |
|-------------|------------------------------|---------|

**Current Adjustments \$20.00**

CR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLD = Basic Load Capacity G = Generator

Your Electric Use Pattern

AM PM



24 07



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Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 11/26/2007  
Print Date: 11/26/2007

Page

Service Agreement No: 6630305510

Next Read Date: 12/21/2007

Service Location: 08531E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 016186173270 | 10/22/07 11/21/07      | 30             | Regular      | 39050                   | 38119   | 1              | 6        |

|                              |   |               |
|------------------------------|---|---------------|
| Commercial Rate Schedule 107 | 10/22/2007 - 11/21/2007 30 days               |               |
|                              | Service Charge                                | \$4.01        |
|                              | Non-Summer Energy Charge @ \$0.065143 per kWh | \$4.41        |
|                              | PCA @ \$0.002419 per kWh                      | \$0.16        |
|                              | Conservation Program Funding Charge           | \$0.13        |
|                              | <b>Current Charges - Electric Service</b>     | <b>\$8.72</b> |

CR = Credit, kWh = kilowatt hour, PCA = Power Cost Adjustment, kWh = kilowatt, BLD = Basic Load Capacity, G = Generation

Your Electric Use Pattern




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 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 12/26/2007  
 Print Date: 12/26/2007

Page 1

**Due Date**  
 01/11/2008

**Please Pay**  
 \$8.86

### Account Activity

|                        |               |
|------------------------|---------------|
| Previous Balance       | \$8.72        |
| Payments - Thank You   | \$8.72        |
| Balance Forward        | \$0.00        |
| Current Charges        | \$8.86        |
| <b>Account Balance</b> | <b>\$8.86</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$35 fee.

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Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 01/25/2008  
Print Date: 01/26/2008

Page 2

Service Agreement No: 6630305510

Next Read Date: 02/21/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

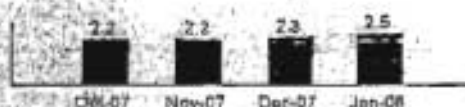
| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 015166178275 | 12/21/07 01/23/08      | 33             | Regular      | 38188                   | 38271   | 1              | 83       |

Commercial 12/21/2007 - 01/23/2008 33 days

|                   |   |               |
|-------------------|---|---------------|
| Rate Schedule 107 | Service Charge                                | \$4.00        |
|                   | Non-Summer Energy Charge @ \$0.065143 per kWh | \$5.41        |
|                   | PCA @ \$0.002419 per kWh                      | \$0.20        |
|                   | Conservation Program Funding Charge           | \$0.14        |
|                   | <b>Current Charges - Electric Service</b>     | <b>\$9.75</b> |

R = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

Your Electric Use Pattern




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 or (800) 488-6151. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 02/25/2008  
 Print Date: 02/25/2008

Page 1

Due Date  
03/11/2008

Please Pay  
\$9.20

### Account Activity

|                        |               |
|------------------------|---------------|
| Previous Balance       | \$9.75        |
| Payments - Thank You   | \$9.75        |
| Balance Forward        | \$0.00        |
| Current Charges        | \$9.20        |
| <b>Account Balance</b> | <b>\$9.20</b> |

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*PAID 3/2/08  
 CLE # 1434 20*

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 or (800) 466-6161. So hable español.  
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 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 03/25/2008  
 Print Date: 03/25/2008

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Service Agreement No: 6630305510

Next Read Date: 04/22/2008

Service Location: 05S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 018 88179278 | 02/21/08 03/21/08      | 29             | Regular      | 38346                   | 38656   | 1              | 310      |

| Billing kWh | BLC |
|-------------|-----|
| 1           | 0   |

Commercial  
 Rate Schedule  
 107

Prorated 02/22/08 - 02/29/08 8 days - 6.98

Service Charge \$1.10

Non-Summer Energy Charge @ \$0.065143 per kWh \$5.57

PCA @ \$0.002419 per kWh \$0.21

Conservation Program Funding Charge \$0.10

Prorated 03/01/08 - 03/21/08 21 days - 19.26

Service Charge \$2.90

Non-Summer Energy Charge @ \$0.069225 per kWh \$15.54

PCA @ \$0.002419 per kWh \$0.54

Conservation Program Funding Charge \$0.28

**Current Charges - Electric Service \$26.24**

CR = Credit kWh, K = Kilowatt-hour, PCA = Power Cost Adjustment / kWh = Kilowatt, BLC = Basic Load Capacity, G = Generation

Your Electric Use Pattern





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For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 04/24/2008  
Print Date: 04/24/2008

Page

pd 5/20/08  
ch #1462

|            |            |
|------------|------------|
| Due Date   | Please Pay |
| 05/09/2008 | \$12.64    |

Account  
Activity

|                        |                |
|------------------------|----------------|
| Previous Balance       | \$26.24        |
| Payments - Thank You   | \$26.24        |
| Balance Forward        | \$0.00         |
| Current Charges        | \$12.64        |
| <b>Account Balance</b> | <b>\$12.64</b> |

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Green Power



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or (800) 488-6161. Se habla español.  
For faster service please call  
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 6528504873  
Billing Date: 06/24/2008  
Print Date: 06/24/2008

Page 2

www.idahopower.com

Service Agreement No: 6630305510

Next Read Date: 07/22/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

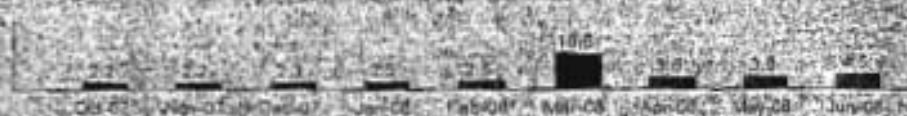
| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 00618676278  | 05/21/08       | 06/20/08 | 30             | Regular      | 38885          | 39021   | 1              | 136      |

| Billing kW | BLC |
|------------|-----|
|            | 0   |

|   |   |                |
|---|---|----------------|
| Commercial                                | Prorated 05/22/08 - 05/31/08 10 days - 4.65         |                |
| Rate Schedule                             | Service Charge                                      | \$1.33         |
| 07  | Non-Summer Energy Charge @ \$0.089225 per kWh       | \$3.14         |
|   | PCA @ \$0.002419 per kWh                            | \$0.11         |
|   | Conservation Program Funding Charge                 | \$0.07         |
|   | Prorated 06/01/08 - 06/20/08 20 days - 9.94         |                |
|   | Service Charge                                      | \$2.67         |
|   | Summer Energy Charge 0-300 kWh @ \$0.070269 per kWh | \$6.37         |
|   | PCA @ \$0.007864 per kWh                            | \$0.71         |
|   | Energy Efficiency Services                          | \$0.19         |
| <b>Current Charges - Electric Service</b> |   | <b>\$14.59</b> |

CR = Credit, kWh = Kilowatt Hour, PCA = Power Cost Adjustment, kW = Kilowatt, BLC = Basic Load Capacity, IG = Generation

Your Electric Use Pattern



Pd  
7-3-08  
CLL #1480  
na





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Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 07/24/2008  
Print Date: 07/24/2008

Page

pd 8/7/08  
ck #14

Due Date  
08/08/2008

Please Pay  
\$17.93

Account  
Activity

Previous Balance

\$1.9

Payments - Thank You

\$1.9

Balance Forward

\$0.0

Current Charges

\$17.9

Account Balance

\$17.9

Please Note: Any unpaid bill must be paid by the monthly service of one percent (1%) for Idaho customers. Any credit due to a  
waiting will be applied to future billings or can be refunded. Returned checks may be resubmitted electronically for  
payment. Checks remaining unpaid will be charged a \$20 fee.

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 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 08/22/2008  
 Print Date: 08/22/2008

Page 1

**Due Date**  
 09/09/2008

**Please Pay**  
 \$19.35

### Account Activity

|                        |                |
|------------------------|----------------|
| Previous Balance       | \$17.93        |
| Payments - Thank You   | \$17.93        |
| Balance Forward        | \$0.00         |
| Current Charges        | \$19.35        |
| <b>Account Balance</b> | <b>\$19.35</b> |

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*PD-19-35  
 8/25/08  
 (HARRIS)*

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Tuesday - Friday, 7:30 a.m. to 5:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 09/23/2008  
Print Date: 09/23/2008

Service Agreement No: 6630305510

Next Read Date: 10/21/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|---------------------------------|----------------|----------|
| 01686175278  | 08/20/08 09/19/08      | 30             | Regular      | 39387 39624                     | 1              | 237      |

| Billing kW | BLC |
|------------|-----|
| 1          | 0   |

### Commercial Rate Schedule 107

08/20/2008 - 09/19/2008 30 days

|  |         |
|--|---------|
| Service Charge   | \$4.00  |
| Non-Summer Energy Charge @ \$0.070269 per kWh, 19 days       | \$10.55 |
| Summer Energy Charge @ 300 kWh @ \$0.070269 per kWh, 11 days | \$6.14  |
| PCA @ \$0.007864 per kWh                                     | \$1.86  |
| Energy Efficiency Services                                   | \$0.41  |

Current Charges - Electric Service **\$22.93**

GR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

### Your Electric Use Pattern






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Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 11/24/2008  
Print Date: 11/24/2008

Page 2 of 2

Service Agreement No.: 6630305510

Next Read Date: 12/22/2008

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 01686179275  | 10/21/08       | 11/20/08 | 30             | Verified     | 39865          | 40247   | 1              | 382      |

| Billing kW | BLC |
|------------|-----|
| 2          | 0   |

Commercial 10/21/2008 - 11/20/2008 30 days

Rate Schedule 107 Service Charge \$4.00

Non-Summer Energy Charge @ \$0.070269 per kWh \$26.84

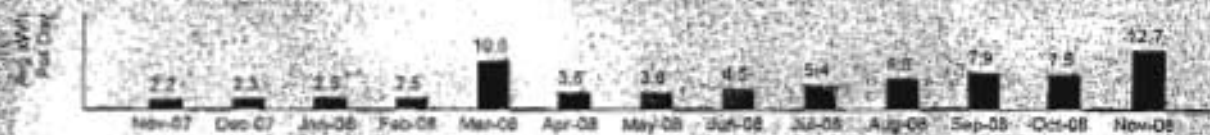
PCA @ \$0.007864 per kWh \$3.00

Energy Efficiency Services \$0.60

**Current Charges - Electric Service \$34.44**

CER = Credit kWh + Kilo-watt-hour PCA = Power Cost Adjustment, kW = Kilowatt, BLC = Basic Load Capacity, G = Generation

Your Electric Use Pattern





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Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8528504873  
Billing Date: 12/24/2008  
Print Date: 12/24/2008

Service Agreement No: 5630305510

Next Read Date: 01/22/2009

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period From To | Number of Days | Reading Type | Meter Readings Previous | Current | Meter Constant | kWh Used |
|--------------|------------------------|----------------|--------------|-------------------------|---------|----------------|----------|
| 01686173278  | 11/20/08 12/22/08      | 32             | Special      | 40247                   | 40547   | 1              | 3        |

| Billing kW | BLC |
|------------|-----|
| 2          | 0   |

|                                    |   |        |
|------------------------------------|---|--------|
| Commercial Rate Schedule 107       | 11/20/2008 - 12/22/2008 32 days               |        |
|                                    | Service Charge                                | \$4.0  |
|                                    | Non-Summer Energy Charge @ \$0.070269 per kWh | \$21.0 |
|                                    | PCA @ \$0.007864 per kWh                      | \$2.3  |
|                                    | Energy Efficiency Services                    | \$0.4  |
| Current Charges - Electric Service |   | \$27.9 |

CR = Credit kWh = Kilowatt-hour, PCA = Power Cost Adjustment, kW = Kilowatt, BLC = Basic Load Capacity, kWh = Kilowatt-hour

### Your Electric Use Pattern

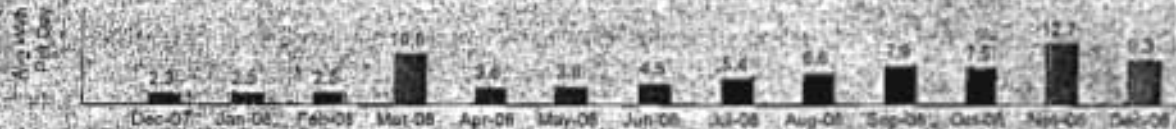




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or (800) 468-6161. Se habla español.  
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Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
Account Number: 8628584873  
Billing Date: 01/26/2009  
Print Date: 01/27/2009

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Page 2 of 2

Service Agreement No: 8630305510

Next Read Date: 02/20/2009

Service Location: 08S31E18/COMMERCIAL PUMP/AMERICAN FALLS, ID 25HP

| Meter Number | Service Period |          | Number of Days | Reading Type | Meter Readings |         | Meter Constant | kWh Used |
|--------------|----------------|----------|----------------|--------------|----------------|---------|----------------|----------|
|              | From           | To       |                |              | Previous       | Current |                |          |
| 081501747/B  | 12/22/08       | 01/22/09 | 31             | Verified     | 40647          | 42891   | 1              | 2344     |

| Billing kW | BLC |
|------------|-----|
| 4          | 0   |

|   |                 |
|---|-----------------|
| 12/22/2008 - 01/22/2009 31 days               |                 |
| Service Charge                                | \$4.00          |
| Non-Summer Energy Charge @ \$0.070269 per kWh | \$164.71        |
| PCA @ \$0.007864 per kWh                      | \$18.43         |
| Energy Efficiency Services                    | \$3.15          |
| <b>Current Charges - Electric Service</b>     | <b>\$190.29</b> |

|                            |               |
|----------------------------|---------------|
| Late Payment Charge        | \$0.27        |
| <b>Current Adjustments</b> | <b>\$0.27</b> |

CR = Credit kWh = kilowatt-hour PCA = Power Cost Adjustment kW = kilowatt BLC = Basic Load Capacity Q = Generation

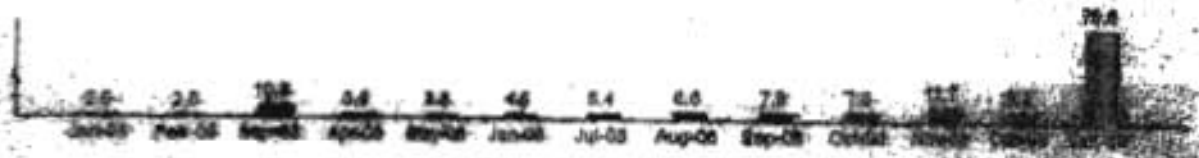
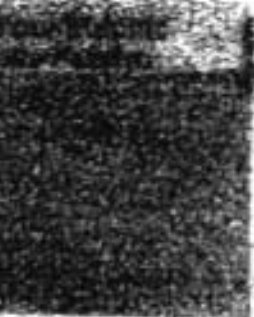


Exhibit   C



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 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 01/26/2009  
 Print Date: 01/27/2009

Page 1 of

Due Date  
02/11/2009

Please Pay  
\$218.49

### Account Activity

|                              |                 |
|------------------------------|-----------------|
| Previous Balance .....       | \$27.93         |
| Payments - Thank You .....   | \$0.00          |
| Balance Forward .....        | \$27.93         |
| Total Adjustments .....      | \$0.27          |
| Current Charges .....        | \$190.29        |
| <b>Account Balance</b> ..... | <b>\$218.49</b> |

*Handwritten notes: Paid 1-28-09, OK # 1213*

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a rebilling will be applied to future billings or can be refunded upon customer request. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

Learn, Reduce & Save  
With New  
ENERGY Tools

Learn about your energy use in your home or business and get tips on how to save energy. Become your own Account Manager with **ENERGY Tools** now available at the E-services area of [www.idahopower.com](http://www.idahopower.com).



Consider joining Idaho Power in supporting Project Share, a valuable community service that uses voluntary contributions to assist individuals and families who need help paying their energy bills during the winter heating season. To make a pledge, visit our Web site ([www.idahopower.com](http://www.idahopower.com)) or mark the appropriate box on the back of the pay stub.

Please detach and return the portion below with your payment. Please detach and return this portion with your payment.



www.idahopower.com

Questions? Contact us at:  
 PO BOX 70, Boise, ID 83707.  
 Or call (208) 388-2323 (Treasure Valley)  
 or (800) 488-4151. Se habla español.  
 For faster service please call  
 Tuesday - Friday, 7:30 a.m. to 8:30 p.m.

Customer Name: ROSANNA ANDERSEN  
 Account Number: 8528504873  
 Billing Date: 02/18/2009  
 Print Date: 02/18/2009

Due Date  
 03/05/2009

Please Pay  
 \$228.97

### Account Activity

|                            |   |                 |
|----------------------------|---|-----------------|
| Previous Balance .....     |   | \$218.49        |
| Payments - Thank You ..... | <i>W. Lattin</i>                                    | \$27.93 C       |
| Balance Forward .....      | <i>Product</i>                                      | \$190.56        |
| Current Charges .....      | <i>Paid 3/4/09</i><br><i>ck 12/17</i><br><i>A+B</i> | \$38.41         |
| <b>Account Balance</b>     |   | <b>\$228.97</b> |

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Any credit due to a re-billing will be applied to future billings or can be refunded upon customer request. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a \$20 fee.

### Important Changes to Your Rates

The Idaho Public Utilities Commission approved an increase of 0.42 percent in your base electricity rates effective February 1, 09, and changes to rate design that further promote energy efficiency and conservation. For more information, go to [www.idahopower.com/myenergy](http://www.idahopower.com/myenergy)

The amount due includes a past due balance. If you have already remitted payment, thank you. If not, please remit payment to ensure it is received by the due date. Thank you.

### Preferred Pay

Save time with PreferredPay and have your Idaho Power bill automatically deducted from your checking account. That's one less check to write each month, and you still receive a statement for your records. Call our Customer Service Center for an application or visit our Web site at [www.idahopower.com](http://www.idahopower.com).

Exhibit     D

*State  
Power Receipt*

WESTERN UNION  
RIDLEY'S & 090000  
POCAHELLO, ID  
IDAHO POWER NEW

7236897 0609 03/05/09 11:36AM 064 014100  
CURRENCY: USD  
85285048731  
01 CHECK PD \$228.97 CASH PD \$0.00  
01 STATEMENT \$228.97 TOTAL PD \$228.97  
CHANGE DUE \$0.00 EMP-04

**IF YOU DO NOT HAVE YOUR BILLING STATEMENT, COMPLETE SHADED AREA**  
**SI USTED NO TIENE LA CUENTA DE CARGO, LLENE LOS DATOS SOLICITADOS EN EL AREA GRIS**

Account Number (or call phone number when required)

Numero de cuenta (o el numero de telefono cuando sea necesario)

Billing Name

Nombre de la cuenta de cobro

Address

Direccion

Phone ( )

Numero del telefono

CUSTOMER ACCEPTS ALL POSTED TERMS AND CONDITIONS. SEE REVERSE FOR ALL TERMS AND CONDITIONS.  
EL CLIENTE ACEPTA TODOS LOS TERMINOS Y TODAS LAS CONDICIONES QUE SE HAN INDICADO. FAVOR DE LEER LOS TERMINOS Y LAS CONDICIONES QUE SE ENCUENTRAN AL REVERSO DE ESTE FORMULARIO.

FOR USE WITH ELECTRONIC CHECK TRANSACTION ONLY.

SOLAMENTE PARA TRANSACCIONES DE CHEQUE ELECTRONICO.

I authorize the biller or its agent to convert my check to a draft or an electronic funds transfer and to debit my account for the amount of the transaction.

Autorizo a la compañía que efectúa el cobro o a sus agentes a convertir mi cheque en giro o en transferencia electrónica de fondos y a debitar de mi cuenta el importe correspondiente a este transacción.

Actual. País: ☐ ☐

Signature X ☐ ☐

Fecha

ELECTRONIC CHECK - A SAFER & MORE SECURE WAY TO PAY  
CHEQUE ELECTRONICO - UNA MANERA MAS CONFIBLE Y MAS SEGURA DE HACER PAGOS

SRFP3REC1 (REV 00/06)  
CVP2010

CUSTOMER COPY  
COPIA DEL CLIENTE

Exhibit   E



*File  
Copy***IDAHO POWER****PROTEST OF BILL and LETTER OF DEMAND**

I am paying this bill, but I dispute it. It appears there has been an excessive drain on the January power that has nothing to do with a radio and a few lights. This far exceeds any previous bill we have ever had on the home. Beyond that, I believe Idaho Power owes us in the amount of \$3,358.42 plus associated damages. I am filing this letter with you and also with PUC to detail the claim.

Idaho Power disconnected power from the transformer and removed the meter. The box was found smashed as well. This is believed to have occurred on or about October 6, 2004. A Denise McKinney claimed she had the rights, however, as you will find in the attached news articles and letter to the editor, she had no rights and the court has since been found to have blundered badly. The partnership Idaho Power records shows as the customer from July, 1996, had no obligation to McKinney. When the home was returned to us by the court, we inquired of Idaho Power what was needed to re-install the power. We paid \$2,383.02 in supplies and \$40.00 for a permit from Idaho Division of Building Safety (Receipt 3443879) dated 10/3/2007 for reinstallation of power for account # 3294640506 to the transformer. Prior to that we paid the fee and reconnected the power to the garage (account # 1002773139), which was again cut off at McKinney's request.

In October of 2007, we followed all the instructions Idaho Power told us to do to reconnect the home (account # 3294640506). The final inspection by Steve Thompson and permits were all in place and given to Idaho Power with the number of the right of way identified. When the American Falls office of Idaho Power was instructed to complete the job, the engineer (Anderson?) hedged and said he didn't know that he could do that. We understand Mr. Anderson consulted with Thornhill and his good friend, Bob Phelps (a former Idaho Power employee) and others to come to this conclusion. We received a letter from ID Power's Boise attorneys (letter should be on file, but will furnish upon request) stating they could not get permission from McKinney to come on the land and make the installation.

I am attaching copies of headline news and letter regarding the McKinney's failed attempt to auction the land before the end of her believed right of redemption period after she was foreclosed on. McKinney had no claim on the property and had held it on a sheriff's deed gotten by default against parties who did not own the property. McKinney (with help from Phelps?) ripped out or geri-rigged electrical connections and cut water lines to the 2 occupied homes, before the sheriff's department warned her she would go to jail if she did any more damage. Then she ordered the power be cut off. We have assumed and paid the bill since that time. I consulted with the Idaho Power people and was informed that everything to the big breaker box belonged to Idaho Power, and anything from that box was ours to use as we chose. We chose to hook the house to that meter which was on the parcel on which the house resides. This added another \$915.00 to our expenses in getting power that should never have been disconnected in the first place.

It apparently was very disturbing to Mr. Phelps (who passes the home frequently) to see lights on. So, we got a call from the engineer claiming the power was not hooked

up right. He finally conceded that it would be OK if a neutral ground was installed. Soon after, a Troy Noblick (East lines leader for Idaho Power) called claiming it was a safety issue for his meter readers (on a locked box?). He said the house would have to be disconnected by 6 PM or he would cut the power off and there would be no water to the homes. (NOTE: In one home, an 80 year old Doctor and his son who had just had his leg amputated mid calf and then to mid thigh on or about Feb 28, 2009, would be without water.) Troy Knoblick refused to give his badge # or give the name of the person he was getting orders from. Finally, a Pat Herrington, Attorney for Idaho Power said the power would be all cut off by 6PM unless the home was disconnected. It smacks of conspiracy!! Is this the way Idaho Power does business?

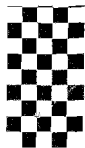
Not counting damages from the time of the original disconnect until present or whenever power is replaced so full enjoyment of the home could be had (minimum of \$600-\$900/mo), the actual cash outlay cost us by Idaho Power in reinstallation of service has been \$3,358.02. The current status is that a Thornhill assignee claims he now has rights via a sheriff's deed (once more not against the parties who own the home, nor the land). The matter is on appeal and will be heard by the Supreme Court early May.

Therefore, we would request a reconnection of power for which we have paid dearly and some arrangement for related damages.

Respectfully submitted,



Rosanna Andersen  
March 4, 2009



Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Tel: (208) 233-0128  
Fax: (208) 233-4895  
Idaho State Bar No. 3898

Attorney for Defendants/  
Counterclaimants

|   |           |
|---|-----------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |           |
| FILED 12.8.10                             | TIME 9:14 |
| CHRISTINE STEINLICHT, CLERK               |           |
| BY <i>[Signature]</i>                     | DEPUTY    |

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company,

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants.

Case No. CV-2009-066

**WITHDRAWAL OF DAMAGES  
SUBMISSIONS**

Defendants/Counterclaimants, by and through their attorney of record, Norman G. Reece, P.C., hereby withdraw their damages submissions, filed by affidavit on December 2, 2010 and consent to immediate entry of final judgment.

DATED this 8th day of December, 2010.

NORMAN G. REECE, P.C.

By Norman G. Reece, Jr.  
Norman G. Reece, Jr., of the Firm, Attorney  
for Defendants/Counterclaimants

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2010, I served a true and correct copy of the foregoing WITHDRAWAL OF DAMAGES SUBMISSIONS, by facsimile transmission to:

Lane V. Erickson  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204-1391  
(Fax no.: 208-232-6109)

Norman G. Reece, Jr.  
Norman G. Reece, Jr.

DISTRICT COURT  
SIXTH JUDICIAL DISTRICT

FILED 12.9.10 TIME 12:45

CHRISTINE STEINLICHT, CLERK

BY *[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company,

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

---

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants.

Case No. CV-2009-066

**JUDGMENT**

THE COURT, having issued its Memorandum Decision and Order, filed December 15, 2009,  
and its Memorandum Decision and Order Re: Plaintiff's Motion to Dismiss and Defendants' Motion

to Amend, filed November 2, 2010, and Defendants having withdrawn their remaining claims against Plaintiff, the Court finds that Judgment should enter in the above-numbered and styled cause.


ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Defendants' original counterclaim, filed herein on March 31, 2009, and Defendants' amended counterclaim, filed herein on April 8, 2009, are dismissed in their entirety with prejudice, and Defendants shall take nothing by way of their claims in said original counterclaim and said amended counterclaim.

2. Judgment is hereby entered in favor of Plaintiff on Plaintiff's Amended Complaint for Eviction, filed October 17, 2009.

IT IS SO ORDERED.

DATED this 8th day of December, 2010.

  
\_\_\_\_\_  
HON. STEPHEN S. DUNN  
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I am a duly certified Clerk of the Court and that on this <sup>9th</sup>~~8th~~ day of December, 2010, I served a true and correct copy of the foregoing JUDGMENT, by depositing same in United States mail, postage pre-paid, in an envelope addressed to:

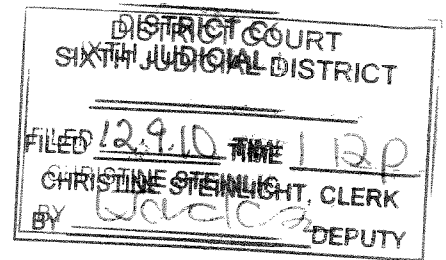
Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, ID 83202

Lane V. Erickson, Esq.  
RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.  
P.O. Box 1391  
Pocatello, ID 83204-1391

Christine Steinlicht  
Clerk of the Court

By Lindsey Ammer  
Deputy Clerk

Norman G. Reece, Jr.  
NORMAN G. REECE, P.C.  
445 West Chubbuck Road, Suite D  
Chubbuck, Idaho 83202  
Tel: (208) 233-0128  
Fax: (208) 233-4895  
Idaho State Bar No. 3898



Attorney for Appellants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS L.L.C., an Idaho Limited  
Liability Company,

Plaintiff,

vs.

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife; and any and all  
individuals claiming any possessory interest by  
or through him.

Defendants.

---

TERRY and ROSANNA ANDERSEN,  
Husband and Wife; EVERETT and MARGIE  
ELLS, Husband and Wife,

Counterclaimants/Appellants,

vs.

INDIAN SPRINGS, L.L.C., an Idaho Limited  
Liability Company, and THOMAS M.  
HENESH, an Individual,

Counterdefendants/Respondents.

Case No. CV-2009-066

**NOTICE OF APPEAL**



TO: INDIAN SPRINGS, L.L.C., THOMAS M. HENESH, THEIR ATTORNEYS, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. Defendants/Counterclaimants, Terry and Rosanna Andersen and Everett and Margie Ells, appeal against the above-named Plaintiff/Counterdefendants, Indian Springs, L.L.C., and Thomas M. Henesh, to the Idaho Supreme Court from Judgment filed December 9, 2010, the Honorable Stephen S. Dunn, District Judge, presiding.

2. Defendants/Counterclaimants have the right to appeal to the Idaho Supreme Court, in that the judgment described in paragraph 1 is appealable under and pursuant to I.A.R. 11(a)(1).

3. Preliminary Statement of Issues on Appeal:

(a) Did the court err in dismissing Appellants' claims for unjust enrichment where the Respondent purchased the subject property in 2008 and Appellants' unjust enrichment claim pertained in part to benefits Appellants alleged they conferred on the subject property through 2009?

4. No order has been entered sealing all of any portion of the record.

5. The Appellants request the preparation of the following portions of the reporter's transcript in compressed format:

(a) Hearing of December 10, 2009 on Plaintiff's Motion to Amend Complaint, Defendant's Amended Motion to Dismiss the Amended Complaint, and Plaintiff's Complaint for Eviction.

6. Appellants request the following documents be included in the clerk's record, or filed as an exhibit under Rule 31, I.A.R., in addition to those automatically included under Rule 28, I.A.R.:

- (a) Complaint filed March 3, 2009;
- (b) Defendants' (Margie and Everett Ells) Answer and Counterclaim, filed March 31, 2009;
- (c) Defendants' (Terry and Rosanna Andersen) Answer and Counterclaim, filed March 31, 2009;
- (d) Motion to Dismiss, filed March 31, 2009;
- (e) Amendment to Defendants' Answer and Counterclaim, filed April 8, 2009;
- (f) Minute Entry and Order, filed April 17, 2009;
- (g) Amended Motion to Dismiss Complaint for Eviction and Notice of Hearing, filed October 14, 2009;
- (h) Affidavit of Terry Andersen in Support of Amended Motion to Dismiss, filed October 14, 2009;
- (i) Affidavit of Lester Dee Baker, filed October 14, 2009;
- (j) Amended Complaint for Eviction, filed October 19, 2009;
- (k) Motion for Leave to Amend Pleadings, filed November 2, 2009;
- (l) Objection to Motion for Leave to Amend Pleadings, Motion to Strike Amended Complaint for Eviction and Motion for Enlargement of Time, filed November 6, 2009;
- (m) Minute Entry and Order, filed November 17, 2009;
- (n) Affidavit of Rodney Burch, dated November 17, 2009;
- (o) Minute Entry and Order, filed December 14, 2009;
- (p) Memorandum Decision and Order, filed December 15, 2009;
- (q) Minute Entry and Order, filed March 16, 2010;
- (r) Memorandum Decision and Order, filed March 31, 2010;
- (s) Minute Entry and Order, filed April 13, 2010;

- (t) Motion to Reconsider, filed May 24, 2010;
- (u) Affidavit of Terry Andersen in Support of Documents Submitted in Evidence,  
filed June 10, 2010,
- (v) Minute Entry and Order, filed June 15, 2010;
- (w) Memorandum Decision and Order on Motion for Reconsideration, filed July  
1, 2010;
- (x) Answer to Verified Complaint for Eviction and Counterclaim, filed July 8,  
2010;
- (y) Motion to Dismiss, filed August 9, 2010;
- (z) Motion for Leave to Amend Pleadings and Notice of Hearing, filed September  
21, 2010;
- (aa) Plaintiffs' Objection to Defendants' Motion to Amend, filed September 29,  
2010;
- (bb) Minute Entry and Order, filed October 13, 2010;
- (cc) Memorandum Decision and Order, filed November 2, 2010;
- (dd) Affidavit of Terry Andersen, filed December 2, 2010;
- (ee) Affidavit of Rosanna Andersen, filed December 2, 2010;
- (ff) Withdrawal of Damages Submissions, filed December 8, 2010;
- (gg) Judgment, filed December 9, 2010

7. I certify that:

- (a) A copy of this Notice of Appeal has been served on the court reporter of  
whom a transcript has been requested as named below at the address set out  
below.

Sheila Fish  
624 East Center, Room 220  
Pocatello, ID 83201

- (b) The Clerk of the District Court has been paid \$120.25 in advance for the preparation of the reporter's transcript.
- (c) The estimated fee for preparation of the clerk's record of \$100.00 has been paid to the Clerk of the District Court.
- (d) Appellate filing fees of \$15.00 to the Clerk of the District Court and \$86.00 to the Idaho Supreme Court have been paid.
- (e) Service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 9th day of December, 2010.

NORMAN G. REECE, P.C.

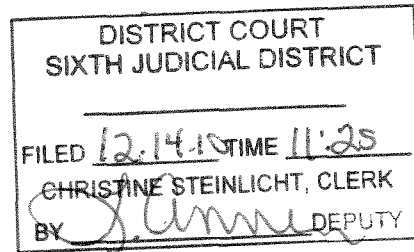
By Norman G. Reece, Jr.  
Norman G. Reece, Jr., of the Firm, Attorney  
for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2010, I served a true and correct copy of the foregoing NOTICE OF APPEAL, by depositing the same in the United States mail, postage pre-paid, in an envelope to:

Lane V. Erickson  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204-1391

Norman G. Reece, Jr.  
Norman G. Reece, Jr.



IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC, )  
An Idaho Limited Liability Company, )  
 )  
Plaintiffs, )  
 )  
-vs- )  
 )  
TERRY and ROSANNA ANDERSEN, )  
Husband and wife; EVERETT AND )  
MARGIE ELLS, husband and wife; and )  
any and all individuals claiming any )  
possessory interest by or through them. )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-2009-066

MINUTE ENTRY AND ORDER

The above entitled matter came before the Court on Thursday, December 9, 2010, concerning when Defendants were required to remove their personal belongings from the real property of Plaintiff. The parties have been in contact with the Court several times during the last week as to extending the as to the deadline that the property was to have been removed.

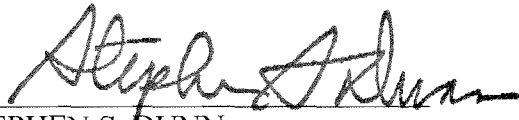
Plaintiff was represented by attorney, Lane Erickson, Norman Reece appeared on behalf of Defendants.

The Court, just prior to this matter, had taken up the companion case of Indian Springs v. Mahoney, wherein a date for removal of the property had been determined. Because both cases have the same attorney, and it makes matters more convenient and efficient if both parties retrieve their property at the same time;

IT IS HEREBY ORDERED that Defendants herein shall have their property removed from the premises on or before December 23<sup>rd</sup>. No extensions will be granted. Defendant shall not enter the premises at any time without compliance to all previous orders.

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of December, 2010.



STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norman Reece, Esq.

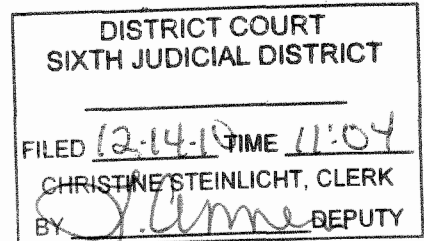
IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC, )  
An Idaho Limited Liability Company, )  
 )  
Plaintiffs, )

Case No. CV-2009-247

-vs- )

GLEN MAHONEY, an individual, and )  
any and all individuals claiming any )  
possessory interest by or through him. )  
Defendant. )



INDIAN SPRINGS, LLC, )  
& THOMAS H. HENESH, )  
 )  
Plaintiffs, )

Case No. CV-2009-336

-vs- )

GLEN C. MAHONEY, )  
Defendant. )

MINUTE ENTRY AND ORDER

GLEN MAHONEY, an individual, )  
 )  
Plaintiff, )

Case No. CV-2010-188

-vs- )

INDIAN SPRINGS LLC, )  
An Idaho Limited Liability Company, and )  
THOMAS M. HENESH, )  
An individual, and PENNY HENNESH, )  
An individual, )  
 )  
Defendant. )

The above entitled matter came before the Court on December 9, 2010, in Case No. CR-2010-0188, on Defendants' Motion to Set Aside Judgment and Motion to Consolidate all of the

ORDER

above cases. Defendant was present, represented by Lane Erickson, and Plaintiff was represented by Norm Reece.

The Court heard Defendant's motion to consolidate, and Plaintiff's objection, and after considering the same,

IT IS HEREBY ORDERED that all of the above cases are consolidated, and will be consolidated into District Court Case No. CV-2009-247.

The Court heard Defendant's Motion to set aside the default judgment entered in Case No. CV-2010-188, and after hearing Plaintiff's objection, the Court GRANTED the Motion to Set Aside Judgment.

The parties talked at length about Mr. Mahoney retrieving his property from the Indian Springs premises, it was agreed that that would take place within two weeks from the date of this hearing.

THEREFORE, IT IS HEREBY ORDERED that the parties shall coordinate the date for removal of property through their attorneys. Indian Springs attorney, Lane Erickson, or a representative of his, shall be present, but Tom Henesh is not to be present. If there is any property removed which is in dispute, it shall not be removed, but shall be set aside and a record, in writing, and by video, shall be made of the disputed items, and the parties will have to address those items at a later date with the Court.

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of December, 2010.



STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norm Reece, Esq.

ORDER



IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

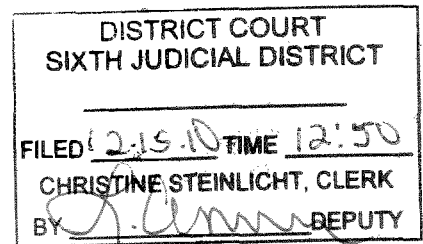
INDIAN SPRINGS LLC,  
An Idaho Limited Liability Company,

Plaintiffs,

-vs-

TERRY and ROSANNA ANDERSEN,  
Husband and wife; EVERETT AND  
MARGIE ELLS, husband and wife; and  
any and all individuals claiming any  
possessory interest by or through them.  
Defendants.

Case No. CV-2009-066



INDIAN SPRINGS LLC,  
An Idaho Limited Liability Company,

Plaintiffs,

-vs-

GLEN MAHONEY, an individual, and  
any and all individuals claiming any  
possessory interest by or through him.  
Defendant.

Case No. CV-2009-247

MINUTE ENTRY AND ORDER

After the hearings on both these cases, held Thursday, December 9, 2010, the Court issued orders which gave certain limitations on the timing of the removal of all the Defendants' personal property from the subject premises. On Wednesday, December 15, 2010, at

approximately 12 noon, the Court held a telephone status conference with the attorneys for both parties. This was the day that the parties had agreed that the Defendants would remove their property. Mr. Erickson was at the property personally, in compliance with the Court's previous orders, and had made arrangements to be present until 4 p.m. Andersens were also present at the property and Mahoney had already been to the property to assess his personal property. Mr. Reece participated in the telephone conference but was not personally present at the property.

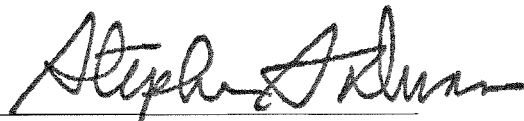
A dispute had arisen as to how many days the Defendants would be allowed to remove their property. Mr. Erickson had taken the position that Defendants had until 4 p.m. today to remove all their property and if they did not do so it would be abandoned. Mr. Reece represented that Andersens were boxing up their personal property and that Andersens and Mahoney had made arrangements for a truck and crew to be present either Thursday, December 16, or Saturday, December 18, to remove all of the property. Mr. Erickson objected to being required to return to the property a second day to facilitate the removal and indicated having himself or someone from his office available on Saturday, December 18, was not possible.

As a result of these discussions and representations, the Court makes the following modification to its prior orders. Andersens and Mahoney are required to remove all their property from the premises by Thursday, December 16, 2010 at 4 p.m. Mr. Erickson, or a representative from his office, is required to be present whenever Andersens or Mahoney are on the premises and to make the video and written record previously required. Andersens and Mahoney are to allow Mr. Erickson, or his representative, full access at any time to make that record and cannot take any steps to prevent such access, the Court noting that both the mobile home and the storage shed in question are owned by Plaintiff, pursuant to prior orders of the Court. Andersens and Mahoney are to comply fully with this order without argument with Mr.

Erickson or his representative. The Court strongly encouraged Mr. Reece to go to the property and to personally converse with his clients and advise them of this order and the consequences of failing to abide by it. If Mr. Reece believes that it is physically impossible to remove all the personal property in compliance with this order, then he and Mr. Erickson are to jointly advise the Court by telephone as soon as possible, but no later than 12 noon on December 16, 2010, for further direction of the Court. Absent any further modifications by the Court no later than December 16, 2010, this order will constitute the final extension of time allowing both Andersens and Mahoney to remove their personal property. Andersens and Mahoney shall not enter the premises at any time without compliance with this order and are not to be on the premises without Mr. Erickson or his representative present. If necessary, Mr. Erickson can request a civil standby from the Power County Sheriff's office.

IT IS SO ORDERED.

DATED this 15<sup>th</sup> day of December, 2010.



STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norman Reece, Esq.

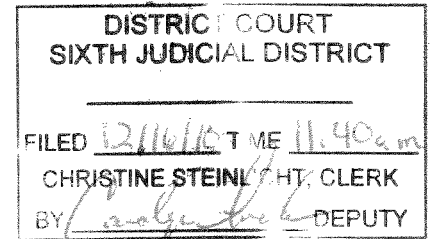
IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC,  
An Idaho Limited Liability Company,  
  
Plaintiffs,

-vs-

TERRY and ROSANNA ANDERSEN,  
Husband and wife; EVERETT AND  
MARGIE ELLS, husband and wife; and  
any and all individuals claiming any  
possessory interest by or through them.  
Defendants.

Case No. CV-2009-066



INDIAN SPRINGS LLC,  
An Idaho Limited Liability Company,  
  
Plaintiffs,

-vs-

GLEN MAHONEY, an individual, and  
any and all individuals claiming any  
possessory interest by or through him.  
Defendant.

Case No. CV-2009-247

MINUTE ENTRY AND ORDER

The Court issued a new order on December 15, 2010, which stated the following:

“Andersens and Mahoney are required to remove all their property from the premises by Thursday, December 16, 2010 at 4 p.m. Mr. Erickson, or a representative from his office, is required to be present whenever Andersens or Mahoney are on the premises and to make the video and written record previously required. Andersens and Mahoney are to allow Mr. Erickson, or his representative, full access at any time to make that record and cannot take any steps to prevent such access, the Court noting that both the mobile home and the storage shed in question are owned by Plaintiff, pursuant to prior orders of the Court. Andersens and Mahoney are to comply fully with this order without argument

with Mr. Erickson or his representative. The Court strongly encouraged Mr. Reece to go to the property and to personally converse with his clients and advise them of this order and the consequences of failing to abide by it. If Mr. Reece believes that it is physically impossible to remove all the personal property in compliance with this order, then he and Mr. Erickson are to jointly advise the Court by telephone as soon as possible, but no later than 12 noon on December 16, 2010, for further direction of the Court.”

At approximately 10:35 a.m. on Thursday, December 16, 2010, the Court received a telephone call from Mr. Reece and Mr. Erickson, as well as a faxed letter from Mr. Reece. Defendants position was that Mahoney would be able to remove his personal property in compliance with the directions above. However, Andersens contended that there were 2 or 3 items, particularly a water dispensing machine and two water heaters, that they wished more time to remove, after today. Plaintiff, through Mr. Erickson, objected to any further extension of time, arguing that the Defendants have a trailer and a large U-Haul truck on the premises, with a crew of 4 men to assist in moving, that Defendants have been given numerous extensions of time to remove their property, and that it is both unreasonable and a hardship to allow further extensions.

Based on the arguments, the Court rules that the Defendants are required to remove all personal property from the Indian Springs premises by 5 p.m. today, December 15, 2010. No further extensions will be permitted. All conditions previously imposed shall remain in place.

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of December, 2010.



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STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norman Reece, Esq.

|   |            |
|---|------------|
| DISTRICT COURT<br>SIXTH JUDICIAL DISTRICT |            |
| FILED 11-12-11                            | TIME 11:11 |
| CHRISTINE STEINLICHT, CLERK               |            |
| BY <i>[Signature]</i>                     | DEPUTY     |

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

INDIAN SPRINGS LLC, )  
An Idaho Limited Liability Company, )  
 )  
 )  
Plaintiffs, )  
 )  
-vs- )  
 )  
TERRY and ROSANNA ANDERSEN, )  
Husband and wife; EVERETT AND )  
MARGIE ELLS, husband and wife; and )  
any and all individuals claiming any )  
possessory interest by or through them. )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV-2009-066

MEMORANDUM DECISION  
ON PLAINTIFF'S MOTION  
FOR ATTORNEY FEES AND COSTS

This matter is before the Court on a Motion filed by Plaintiff for attorney fees and costs. The Court has considered all written submissions of both parties. Defendants requested a hearing on this Motion but, pursuant to I.R.C.P. 7(b)(3)(D), the Court has determined that oral argument is not necessary.

**COURSE OF PROCEEDINGS**

The details of this dispute are set forth in the decision of the Court filed December 15, 2009, and are incorporated herein. In summary, the complaint sought eviction of the Defendants from a mobile home on property Plaintiff obtained through a foreclosure action. Defendants filed a counterclaim asserting a continuing right to the mobile home and damages for the loss of

personal property. The Court concluded that Plaintiff was entitled to possession of the mobile home and directed Defendants to remove their personal property from the mobile home and an associated storage shed. In a subsequent decision, filed October 28, 2010, the Court found in favor of the Plaintiff on Defendants' counterclaim.<sup>1</sup> The facts and analysis of that decision are also incorporated herein by reference.

### **STANDARD OF REVIEW**

In any determination of an award of costs and fees, the threshold question is which party prevailed. I.R.C.P. 54(e)(1) states: "In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract." [Emphasis added]. I.R.C.P. 54(d)(1)(B) governs the prevailing party issue:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

The determination of who is the prevailing party is committed to the sound discretion of the trial court. *Rockefeller v. Grabow*, 139 Idaho 538, 82 P.3d 450 (2003).

The legal basis for an award of costs is I.R.C.P. 54(d)(1). Some costs are awarded to a prevailing party as a matter of right and some costs can be awarded in the discretion of the Court. Discretionary costs are allowed "upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party." When objections to discretionary costs are made the Court "shall make express findings

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<sup>1</sup> There was one remaining issue, i.e., whether Plaintiff owed any money to Defendants for electricity used by Plaintiff after a certain date, but that issue was resolved by stipulation.

as to why such specific item of discretionary cost should or should not be allowed.” Such costs may also be disallowed without objection, in the discretion of the Court and upon express findings. The determination of whether a cost is “exceptional” involves an evaluation both of the cost itself, i.e., whether it is the kind of cost commonly incurred in the type of litigation at issue, and whether the case itself is exceptional. *City of McCall v. Seubert*, 142 Idaho 580, 130 P.3d 1118 (2006); *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 307, 109 P.3d 161 (2005); *Fish v. Smith*, 131 Idaho 492, 960 P.2d 175 (1998).

The award of attorney fees is governed by I.R.C.P. 54(e)(1), which provides that such an award is discretionary, to the prevailing party, “when provided for by any statute or contract.” Whether to award fees and the amount of the fees awarded are matters of discretion, unless it involves a specific determination of a statute which allows for attorney fees. *Grover v. Wadsworth*, 147 Idaho 60, 205 P.3d 1196 (2009); *Taylor v. Maile*, 146 Idaho 705, 201 P.3d 1282 (2009); *Contreras v. Rubley*, 142 Idaho 573, 130 P.3d 1111 (2006).

If fees are awarded, the trial court, in the exercise of its discretion, must consider the factors set forth in I.R.C.P. 54(e)(3). *Sanders v. Lankford*, 135 Idaho 322, 1 P.3d 823 (Ct.App.2000); *Boel v. Stewart Title Co.*, 137 Idaho 9, 16, 43 P.3d 768, 775 (2002); *Brinkman v. Aids Insurance Co.*, 115 Idaho 346, 351, 766 P.2d 1227, 1232 (1988). The district court must, at a minimum, provide a record which establishes that the court considered these factors. *Building Concepts, Ltd. v. Pickering*, 114 Idaho 640, 645, 759 P.2d 931, 936 (Ct.App.1988). A trial court need not specifically address all of the factors contained in I.R.C.P. 54(e)(3) in writing, so long as the record clearly indicates that the court considered them all. *Brinkman*, 115 Idaho at 351, 766 P.2d at 1232. In addition, a court need not blindly accept those attorney fees requested by a



party, and may disallow those fees that were incurred unnecessarily or unreasonably. *Craft Wall of Idaho, Inc. v. Stonebraker*, 108 Idaho 704, 706, 701 P.2d 324, 326 (Ct.App.1985).

Plaintiff seeks recovery of attorney fees pursuant to I.C. § 12-120(1), which provides:

Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is twenty-five thousand dollars (\$25,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

### **ANALYSIS AND DECISION**

#### **I. Prevailing Party**

The Court's first determination is whether the Plaintiff is the prevailing party. In determining the prevailing party, the Court is required to consider the issues and claims involved and the resulting judgment. In this case the Plaintiff prevailed on every significant issue. Although the Court concluded that Plaintiff's original claim should proceed in ejectment rather than eviction, the conclusion was that Plaintiff prevailed and Defendants were required to leave the property. The Court also concluded that the mobile home in question belonged to Plaintiff. Plaintiff prevailed on any significant issue related to the Defendants' counterclaim. The Court has little difficulty concluding that Plaintiff is the prevailing party.

#### **II. Costs as a Matter of Right.**

The costs sought by Plaintiff that qualify are filing fees of \$156.00 and service of process fees of \$460.00. Defendants object to the award of these costs as unnecessary. The Court's review of the case file reflects filing fees of \$68.00 on March 2, 2009. Plaintiff also requested

filing fees of \$88.00 on September 10, 2009, but the case file reflects that this last payment was returned to Plaintiff's counsel. Therefore, only \$68.00 in filing fees is awarded.

Plaintiff seeks service of process fees of \$120.00 on March 11, 2009, \$40.00 on March 12, 2009, and \$100 on March 13, 2009. However, Bannock County Sheriff's records reflect payments of \$160.00 total for service of process in March 2009. This \$160.00 will be awarded. Plaintiff also seeks service of process fees of \$160.00 in September 2009 and there is evidence that such payments were made. Rule 54(d)(1)(C)(2) states that "[a]ctual fees for service of any pleading or document in the action" can be recovered. However, once a complaint has been served and parties have appeared, service by the sheriff of any pleading is an unnecessary expense. Therefore, the Court declines to award the \$160.00 in service of process fees in September 2009. In sum, the Court awards costs as a matter of right in the amount of \$228.00.

### **III. Discretionary Costs.**

Discretionary costs are awarded if the Court finds that they were necessary, exceptional and reasonably incurred, and should, in the interests of justice, be assessed. The burden is on the party seeking the costs to make an adequate showing on all these elements, and the determination of whether to award such costs is within the Court's discretion.<sup>2</sup> The discretionary costs Plaintiff seeks are travel expenses of his attorney in the amount of \$206.10 and photocopy expenses of \$2.19. Defendants object stating that no showing has been made that these expenses meet the standard. While the Court finds that the costs claimed are necessary and reasonable, in the ordinary course of defending this litigation, the Court cannot conclude that any of the discretionary expenses claimed are "exceptional." These expenses are typically and customarily incurred. The Court declines to award discretionary costs.

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<sup>2</sup> *Automobile Club Ins. Co. v. Jackson*, 124 Idaho 874, 880, 865 P.2d 965, 971 (1993); *Beco Construction Co. v. Harper Contracting, Inc.*, 130 Idaho 4, 11, 936 P.2d 202, 209 (Ct.App. 1997).

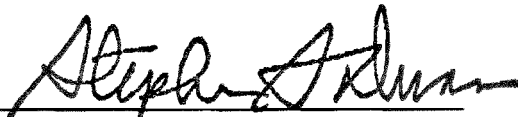
**IV. Attorney Fees.**

Although Plaintiff identifies 12-120(1) as a basis for the fees claimed, there is no citation to authority that supports this statute as an appropriate legal basis for fees in this case, and the Court has not discovered any. This is not a case where Plaintiff sought money damages and the complaint does not state the basis for a claim of less than \$25,000.00 or identify compliance with any of the requirements of this statute. The relief sought here was not financial, but equitable. The Court has failed to find any sufficient legal basis for the award of fees in a case of this type.<sup>3</sup> Therefore, no fees are awarded.

**CONCLUSION**

Based on the foregoing, the Court awards costs as a matter of right in the amount of \$228.00 but declines to award discretionary costs or attorney fees..

DATED 12<sup>th</sup> day of January 2011.

  
STEPHEN S. DUNN  
District Judge

cc: Lane Erickson, Esq.  
Norman Reece, Esq.

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<sup>3</sup> See *Hausam v. Schnable*, 126 Idaho 569, 887 P.2d 1076 (Ct.App.1994).

IN THE SUPREME COURT OF THE STATE OF IDAHO

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| INDIAN SPRINGS LLC, an Idaho        | ) |                              |
| Limited liability company,          | ) |                              |
|                                     | ) | Case #CV-2009-066            |
| Plaintiffs-Counterdefendants-       | ) |                              |
| Respondents.                        | ) | Supreme Court No. 38369-2010 |
|                                     | ) |                              |
| And                                 | ) | CERTIFICATE OF EXHIBITS      |
|                                     | ) |                              |
| THOMAS M. HENESH, an                | ) |                              |
| Individual,                         | ) |                              |
| Counterdefendant-Respondent)        | ) |                              |
| vs.                                 | ) |                              |
|                                     | ) |                              |
| TERRY and ROSANNA                   | ) |                              |
| ANDERSEN, husband and wife;         | ) |                              |
| EVERETT and MARGIE ELLS.            | ) |                              |
| husband and wife; and any and all   | ) |                              |
| individuals claiming any possessory | ) |                              |
| interest by or through him,         | ) |                              |
| Plaintiffs-Counterclaimants-        | ) |                              |
| Appellants.                         | ) |                              |
|                                     | ) |                              |

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I, CHRISTINE STEINLICHT, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Power, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that the following exhibits were offered or admitted in the above entitled cause.

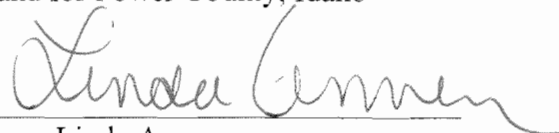
Exhibit O – a copy map of the Indian Springs Property offered at hearing on June 10, 2010.

Exhibit P – a copy of a tax assessment in the name of Everett and Margie Ells, offered at hearing on June 10, 2010.

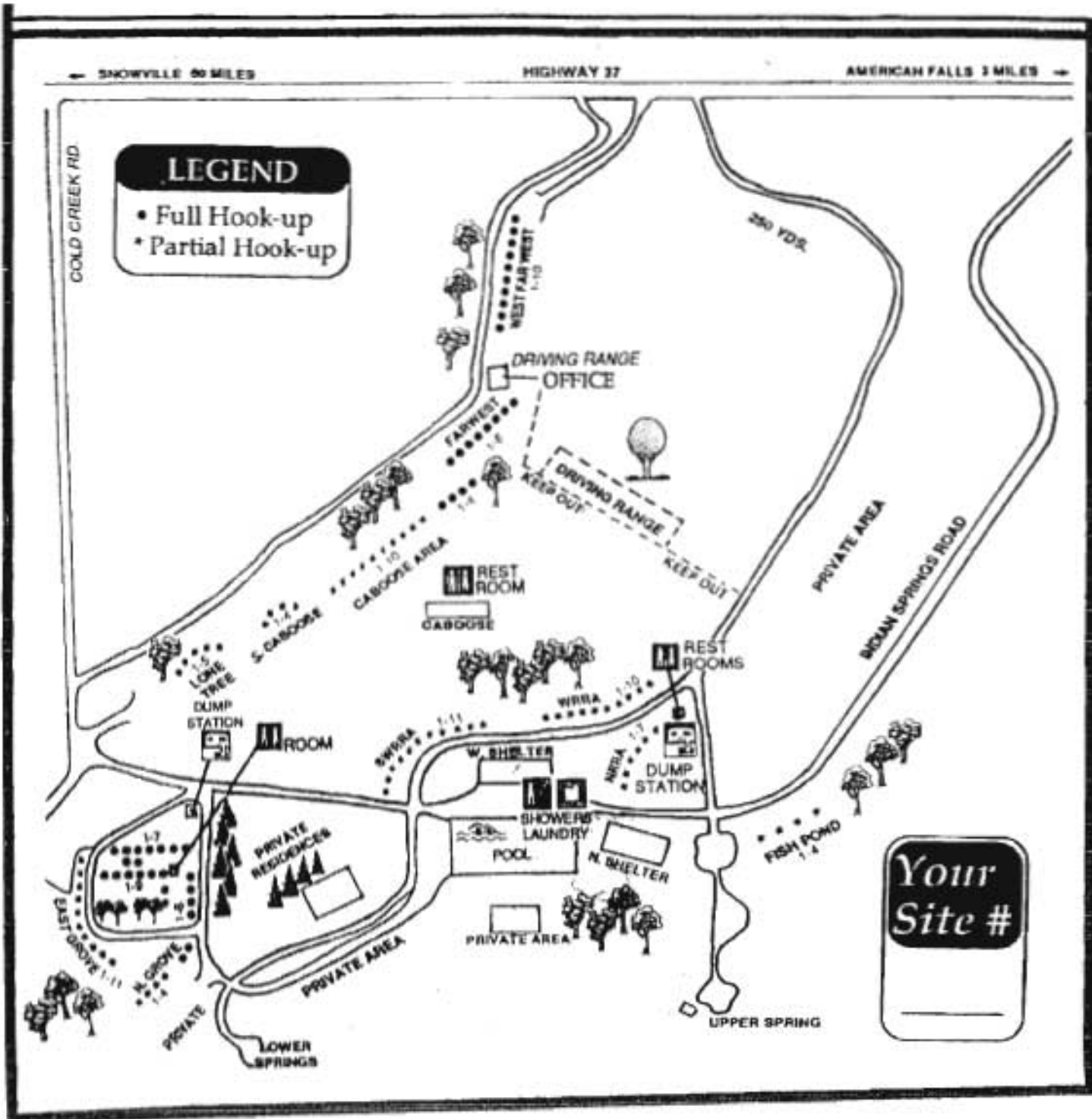
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said  
Court at American Falls, Idaho, this 29<sup>th</sup> day of March 2011.

CHRISTINE STEINLICHT,  
Clerk of the District Court  
In and for Power County, Idaho

By

A handwritten signature in cursive script, appearing to read "Linda Annen", written over a horizontal line.

Linda Annen  
Deputy Clerk



Prepared & Printed by • R.V. Park Map, Inc. • P.O. Box 1782 • Twin Falls, ID 83303 • (208) 734-4577

Ex 0.

POWER COUNTY ASSESSOR  
543 BANNOCK  
AMERICAN FALLS, ID 83211

## ASSESSMENT NOTICE

## PARCEL DESCRIPTION:

6  
1973 VAN DYKE 24X56For any questions, please notify  
the Assessor's office immediately.  
Assessor's telephone#: (208) 226-7616

## PARCEL ADDRESS:

3249 INDIAN SPRINGS 83211

ELLS W EVERETT OR MARGIE B  
489 PACKARD  
POCATELLO ID 83201Appeals of your property value must  
be filed in writing on a form provided  
by the County, by:  
JUNE 28, 2010

Tax Code Area: 3-0000

Parcel Number: MHZ0430-01

A

## ASSESSED VALUE OF YOUR PROPERTY

| CATEGORY AND DESCRIPTION    | LOTS/ACRES | LAST YEAR'S VALUE | CURRENT YEAR'S VALUE |
|-----------------------------|------------|-------------------|----------------------|
| 65 MANUFACTURED HS          |            | 13,700            | 13,700               |
| SUBTOTAL:                   |            | 13,700            | 13,700               |
| LESS HOMEOWNERS EXEMPTION:  |            |                   |                      |
| NET TAXABLE PROPERTY VALUE: |            | 13,700            | 13,700               |

## TAXING DISTRICT INFORMATION

| TAXING DISTRICTS | PHONE NUMBER | DATE OF PUBLIC BUDGET HEARING |
|------------------|--------------|-------------------------------|
| STATE            |              | Not Required                  |
| POWER COUNTY     | 208-226-7611 | 08/23/2010                    |
| SCHOOL #381      | 208-226-5173 | 06/28/2010                    |
| SD381 BOND       | 208-226-5173 | Not Required                  |
| SD381 PLANT FAC  | 208-226-5173 | Not Required                  |
| SD381 SUPP BOND  |              | Not Required                  |
| COUNTY HWY       | 208-226-2661 | 08/26/2010                    |
| FALLSVIEW CEM    | 208-226-2795 | 08/19/2010                    |
| A.F. FIRE        | 208-226-5494 | 08/30/2010                    |
| AF LIBRARY       | 208-226-2335 | 08/16/2010                    |
| HOSPITAL DIST    | 208-226-3200 | 08/16/2010                    |
| AMBULANCE DIST   | 208-226-7611 | 08/23/2010                    |
| MOSQUITO ABATE   | 208-226-7611 | 08/23/2010                    |

To get an estimate of  
your property tax, use  
the Tax Estimator at  
tax.idaho.gov

THIS IS NOT A BILL. DO NOT PAY.

IN THE SUPREME COURT OF THE STATE OF IDAHO

INDIAN SPRINGS LLC, an Idaho )  
Limited liability company, )

Case #CV-2009-066

Plaintiffs-Counterdefendants- )  
Respondents. )

Supreme Court No. 38369-2010

And )

CERTIFICATE OF SERVICE

THOMAS M. HENESH, an )  
Individual, )

Counterdefendant-Respondent )  
vs. )

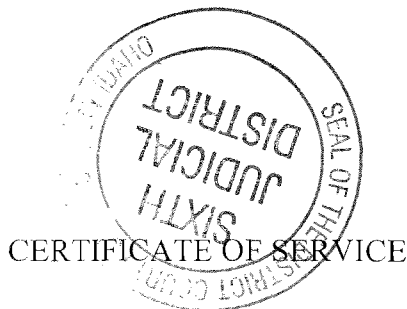
TERRY and ROSANNA )  
ANDERSEN, husband and wife; )  
EVERETT and MARGIE ELLS, )  
husband and wife; and any and all )  
individuals claiming any possessory )  
interest by or through him, )  
Plaintiffs-Counterclaimants- )  
Appellants. )

I, CHRISTINE STEINLICHT, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Power, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to each of the parties and/or attorneys of record in this cause as follows:

Lane Erickson, Esq.  
Attorney at Law  
P.O. Box 1391  
Pocatello, ID 83204-1391

Norm G. Reece, Jr., Esq.  
Attorney at Law  
445 W. Chubbuck Rd., Suite D  
Chubbuck ID 83202

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at American Falls, Idaho, this 24<sup>th</sup> day of February, 2011.



CHRISTINE STEINLICHT  
CLERK OF THE DISTRICT COURT

By Lincoln G. Allen  
Deputy Clerk



Date: 2/4/2011

## Sixth Judicial District Court - Power County

User: LINDA

Time: 12:54 PM

ROA Report

Page 1 of 6

Case: CV-2009-0000066 Current Judge: Stephen S. Dunn

Indian Springs LLC vs. Terry Andersen, etal.

Indian Springs LLC vs. Terry Andersen, Rosanna Andersen, Everett Ells, Marjorie Ells

| Date      | Code | User  | Judge  |
|-----------|------|-------|--|
| 3/3/2009  | NCOC | LINDA | New Case Filed - Other Claims  |
|           |      | LINDA | Filing: D - Unlawful Detainer, Forcible Detainer, Forcible Entry (with or without rent, regardless of the dollar amount) Paid by: Indian Springs LLC (plaintiff) Receipt number: 0000858 Dated: 3/3/2009 Amount: \$68.00 (Check) For: Indian Springs LLC (plaintiff) |
|           | APER | LINDA | Plaintiff: Indian Springs LLC Appearance Lane V Erickson   |
| 3/4/2009  | FILD | LINDA | Notice of Trial Setting and Summons*Marjorie Ells  |
|           | FILD | LINDA | Notice of Trial Setting and summons *Everett Ells  |
|           | FILD | LINDA | Notice of Trial Setting and summons *Rosanna Anderson  |
|           | FILD | LINDA | Notice of Trial Setting and Summons *Terry Anderson  |
| 3/9/2009  | FILD | LINDA | Ex Parte Motion to Shorten Time of Hearing on Motion for continuance or Dismissal  |
|           | AFFD | LINDA | Affidavit of Rosanna Andersen in Support of Motion for Shortening of Time for hearing on the Motion for Continuance or Dismissal   |
|           | FILD | LINDA | Motion for Continuance of Dismissal  |
| 3/10/2009 | HRSC | LINDA | Hearing Scheduled (Further Proceedings 04/09/2009 02:00 PM) Eviction Trial   |
|           | FILD | LINDA | Notice of Trial Setting and Summons *Everett Ells  |
|           | FILD | LINDA | Notice of Trial Setting and summons **Marjorie Ells  |
|           | FILD | LINDA | Notice of Trial Setting and Summons *Terry Anderson  |
|           | FILD | LINDA | Notice of Trial Setting and summons *Rosanna Anderson  |
| 3/31/2009 |      | LINDA | Filing: I2 - Initial Appearance by persons other than the plaintiff or petitioner more than \$300, Not more than \$1000 Paid by: Ells, Everett (defendant) Receipt number: 0001295 Dated: 3/31/2009 Amount: \$58.00 (Cash) For: Ells, Everett (defendant)            |
|           |      | LINDA | Filing: J6 - Special motions, petitions and pleadings - Cross claim (defendant v. defendant or plaintiff v. plaintiff) Paid by: Ells, Everett (defendant) Receipt number: 0001295 Dated: 3/31/2009 Amount: \$14.00 (Cash) For: Ells, Everett (defendant)             |

Indian Springs LLC vs. Terry Andersen, Rosanna Andersen, Everett Ells, Marjorie Ells

| Date      | Code | User  | Judge   |
|-----------|------|-------|---|
| 3/31/2009 |      | LINDA | Filing: I2 - Initial Appearance by persons other than the plaintiff or petitioner more than \$300, Not more than \$1000 Paid by: Andersen, Terry (defendant) Receipt number: 0001296 Dated: 3/31/2009 Amount: \$58.00 (Cash) For: Andersen, Terry (defendant) |
|           |      | LINDA | Filing: J6 - Special motions, petitions and pleadings - Cross claim (defendant v. defendant or plaintiff v. plaintiff) Paid by: Andersen, Terry (defendant) Receipt number: 0001296 Dated: 3/31/2009 Amount: \$14.00 (Cash) For: Andersen, Terry (defendant)  |
|           | FILD | LINDA | Defendants (marge and Everette Ells) Answer and Counterclaim  |
|           | FILD | LINDA | Defendants (Anderson) Answer and Counterclaim   |
|           | FILD | LINDA | Motion to Dismiss (Anderson)  |
|           | FILD | LINDA | Memorandum in Support of Motion to Dismiss  |
| 4/1/2009  | FILD | LINDA | Notice of Hearing   |
|           | RTSO | LINDA | Return Of Service By Sheriff *William Ells  |
|           | RTSO | LINDA | Return Of Service By Sheriff **Margie Ells  |
|           | RTSO | LINDA | return of Service by sheriff *Rosanna Andersen  |
|           | RTSO | LINDA | Return Of Service By Sheriff*Terry Andersen   |
| 4/2/2009  | FILD | LINDA | Ex parte Motion for Extension or Shortening of Time   |
| 4/8/2009  | FILD | LINDA | Amendment to Defendant's Answer and Counterclaim  |
|           | FILD | LINDA | Amendment to Memorandum in Support of Motion to Dismiss   |
| 4/10/2009 | INHD | LINDA | Hearing result for Further Proceedings held on 04/09/2009 02:00 PM: Interim Hearing Held Eviction Trial   |
| 4/17/2009 | MEOR | LINDA | Minute Entry And Order Filed  |
| 9/1/2009  | CHJG | LINDA | Change Assigned Judge (batch process)   |
| 9/10/2009 | HRSC | LINDA | Hearing Scheduled (Eviction 10/08/2009 01:30 PM)  |
|           | SMIS | LINDA | Notice of Trial Setting and Summons*Margie Ells   |
|           | SMIS | LINDA | Noticer of Trial Setting and Summons*Everett Ells   |
|           | SMIS | LINDA | Notice of Trial Setting and Summons *Rosanna Anderson   |
|           | SMIS | LINDA | Notice of Trial and Setting and Summons **Roseanna Anderson   |
|           | SMIS | LINDA | Notice of Trial and summons **Terry Anderson  |
| 9/23/2009 | RTSO | LINDA | Return Of Service By Sheriff**William Everett Ells  |
|           | RTSO | LINDA | Return Of Service By Sheriff *Margie Ells   |

Indian Springs LLC vs. Terry Andersen, Rosanna Andersen, Everett Ells, Marjorie Ells

| Date       | Code | User  | Judge   |
|------------|------|-------|---|
| 9/23/2009  | RTSO | LINDA | Return Of Service By Sheriff *Terry w. Andersen Stephen S. Dunn   |
|            | RTSO | LINDA | Return Of Service By Sheriff *Rosanna Andersen Stephen S. Dunn  |
| 10/8/2009  | CMIN | LINDA | Court Minutes<br>Hearing type: Eviction<br>Hearing date: 10/8/2009<br>Time: 1:31 pm<br>Courtroom:<br>Court reporter: Sheila Fish<br>Minutes Clerk: Linda Annen<br>Tape Number:<br><br>Party: Indian Springs LLC, Attorney: Lane Erickson<br>Party: Rosanna Andersen<br>Party: Terry Andersen<br>Stephen S. Dunn |
|            | INHD | LINDA | Hearing result for Eviction held on 10/08/2009<br>01:30 PM: Interim Hearing Held Stephen S. Dunn  |
| 10/14/2009 | FILD | LINDA | Amended Motion to Dismiss Complaint for<br>Eviction and Notice of Hearing Stephen S. Dunn   |
|            | FILD | LINDA | Affidavit of Terry Andersen in Support of<br>Amended Motion to Dismiss Stephen S. Dunn  |
|            | FILD | LINDA | Affidavit of Leser Dee Baker Stephen S. Dunn  |
|            | HRSC | LINDA | Hearing Scheduled (Motion to Dismiss<br>11/12/2009 02:00 PM) Stephen S. Dunn  |
| 10/19/2009 | FILD | LINDA | Amended Complaint for Eviction Stephen S. Dunn  |
| 10/27/2009 | FILD | LINDA | Brief in Support of Motion to Dismiss Complaint<br>for Eviction Stephen S. Dunn   |
| 11/2/2009  | FILD | LINDA | Memorandum in Support of Eviction and<br>Response to Defendant's Second Motion to<br>Dismiss Stephen S. Dunn  |
|            | FILD | LINDA | Motion for Order to Shorten Time Stephen S. Dunn  |
|            | FILD | LINDA | Motion for Leave to Amend Pleadings Stephen S. Dunn   |
| 11/6/2009  | FILD | LINDA | Objection to Motion for Leave to Amend<br>Pleadings, Motion to Strike Amended Complaint<br>for Eviction and Motion for Enlargement of Time. Stephen S. Dunn   |
| 11/12/2009 | INHD | LINDA | Hearing result for Motion to Dismiss held on<br>11/12/2009 02:00 PM: Interim Hearing Held Stephen S. Dunn   |
|            | HRSC | LINDA | Hearing Scheduled (Further Proceedings<br>12/10/2009 02:30 PM) Stephen S. Dunn  |
|            | DCHH | LINDA | District Court Hearing Held<br>Court Reporter: Sheila Fish<br>Number of Transcript Pages for this hearing<br>estimated: 30 pages or less Stephen S. Dunn  |
| 11/17/2009 | MEOR | LINDA | Minute Entry And Order Filed (October 8th<br>hearing) Stephen S. Dunn   |
|            | MEOR | LINDA | Minute Entry And Order Filed Stephen S. Dunn  |

Indian Springs LLC vs. Terry Andersen, Rosanna Andersen, Everett Ells, Marjorie Ells

| Date       | Code | User      | Judge  |
|------------|------|-----------|--|
| 11/20/2009 | FILD | LINDA     | Amended Motion to Dismiss the amended Complaint for Eviction<br>Stephen S. Dunn  |
|            | AFFD | LINDA     | Affidavit of Rodney Burch<br>Stephen S. Dunn   |
|            | AFFD | LINDA     | Affidavit of Margie Ells<br>Stephen S. Dunn  |
| 12/10/2009 | CMIN | LINDA     | Court Minutes<br>Hearing type: Further Proceedings<br>Hearing date: 12/10/2009<br>Time: 2:17 pm<br>Courtroom:<br>Court reporter:<br>Minutes Clerk: Linda Annen<br>Tape Number:<br>Party: Everett Ells<br>Party: Indian Springs LLC, Attorney: Lane Ericksor<br>Party: Marjorie Ells<br>Party: Rosanna Andersen<br>Party: Terry Andersen<br>Stephen S. Dunn |
|            | INHD | LINDA     | Hearing result for Further Proceedings held on 12/10/2009 02:30 PM: Interim Hearing Held<br>Stephen S. Dunn  |
| 12/14/2009 | MEOR | LINDA     | Minute Entry And Order Filed<br>Stephen S. Dunn  |
| 12/15/2009 | FILD | LINDA     | Memorandum Decision and Order<br>Stephen S. Dunn   |
| 1/29/2010  | MOTN | MCAMPBELL | Motion for Rule 54 (b) Certificate<br>Stephen S. Dunn  |
| 2/1/2010   | HRSC | LINDA     | Hearing Scheduled (Motion 03/11/2010 01:30 PM)<br>Stephen S. Dunn  |
| 2/17/2010  | FILD | LINDA     | Notice of hearing on Andersen Motion for rule 54(b)Certificate<br>Stephen S. Dunn  |
| 3/11/2010  | INHD | LINDA     | Hearing result for Motion held on 03/11/2010 01:30 PM: Interim Hearing Held Motion for Rule 54(b) Certificate<br>Stephen S. Dunn   |
|            | DCHH | LINDA     | District Court Hearing Held<br>Court Reporter: Steph Morse<br>Number of Transcript Pages for this hearing estimated: 10 pages or less<br>Stephen S. Dunn   |
|            | ADVS | LINDA     | Case Taken Under Advisement<br>Stephen S. Dunn   |
| 3/16/2010  | MEOR | LINDA     | Minute Entry And Order Filed<br>Stephen S. Dunn  |
| 3/31/2010  | FILD | LINDA     | Memorandum Decision and Order<br>Stephen S. Dunn   |
|            | DEOP | LINDA     | Decision Or Opinion<br>Stephen S. Dunn   |
| 4/2/2010   | FILD | LINDA     | Motion for Enlargement of Time To Comply with Court Order<br>Stephen S. Dunn   |
|            | FILD | LINDA     | Motion for Shortening of Time<br>Stephen S. Dunn   |
|            | FILD | LINDA     | Order Shortening Time<br>Stephen S. Dunn   |
|            | HRSC | LINDA     | Hearing Scheduled (Motion 04/08/2010 02:15 PM)<br>Stephen S. Dunn  |
| 4/12/2010  | INHD | LINDA     | Hearing result for Motion held on 04/08/2010 02:15 PM: Interim Hearing Held<br>Stephen S. Dunn   |
| 4/13/2010  | MEOR | LINDA     | Minute Entry And Order Filed<br>Stephen S. Dunn  |

Indian Springs LLC vs. Terry Andersen, Rosanna Andersen, Everett Ells, Marjorie Ells

| Date      | Code | User  | Judge  |
|-----------|------|-------|--|
| 5/21/2010 | FILD | LINDA | Order to Appear  |
|           | HRSC | LINDA | Hearing Scheduled (Status 06/10/2010 02:30 PM)   |
| 5/24/2010 | MOTN | EMMA  | Motion to Reconsider   |
| 6/10/2010 |      | JENNI | Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Norman G. Reece, P.C. Receipt number: 0001670 Dated: 6/10/2010 Amount: \$58.00 (Check) For: Ells, Everett (defendant) |
|           | FILD | LINDA | Notice of Appearance   |
|           | FILD | LINDA | Affidavit of Terry Andersen in Support of Documents Submitted in Evidence  |
|           | INHD | LINDA | Hearing result for Status held on 06/10/2010 02:30 PM: Interim Hearing Held & Motion to Reconsider   |
|           | HRSC | LINDA | Hearing Scheduled (Further Proceedings 11/12/2010 01:30 PM)  |
| 6/15/2010 | MEOR | LINDA | Minute Entry And Order Filed   |
| 7/1/2010  | FILD | LINDA | Memorandum Decision and order on Motion for Reconsideration  |
| 7/8/2010  | FILD | LINDA | Brief re: Assignor Liability   |
|           | FILD | LINDA | Notice of Appearance   |
|           | FILD | LINDA | Answer to Verified Amended Complaint for Eviction and Counterclaim   |
|           | FILD | LINDA | Noticie of Service   |
| 8/9/2010  | FILD | LINDA | Response to Brief re: Assignor Liability and Memorandum in Support of Motion to Dismiss, Answer to Verified Amended Complaint and Counterclaim   |
|           | FILD | LINDA | Motion to Dismiss  |
|           | FILD | LINDA | Notice of Service of Responses by Plaintiff to Defendants Requests for Admission   |
| 9/21/2010 | FILD | LINDA | Motion for Leave to Amend Pleadings and Notice of hearing  |
| 9/23/2010 | HRSC | LINDA | Hearing Scheduled (Motion 10/07/2010 02:00 PM) Motion for Leave to Amend Pleadings   |
| 9/29/2010 | FILD | LINDA | Plaintiff's Objection to Defendant's Motion to Amend   |
| 10/7/2010 | INHD | LINDA | Hearing result for Motion held on 10/07/2010 02:00 PM: Interim Hearing Held Motion for Leave to Amend Pleadings  |
|           | DCHH | LINDA | District Court Hearing Held Court Reporter: Sheila Fish Number of Transcript Pages for this hearing estimated: 100 or less   |
|           | ADVS | LINDA | Case Taken Under Advisement  |

Indian Springs LLC vs. Terry Andersen, Rosanna Andersen, Everett Ells, Marjorie Ells

| Date       | Code | User  | Judge  |
|------------|------|-------|--|
| 10/13/2010 | MEOR | LINDA | Minute Entry And Order Filed Stephen S. Dunn   |
| 11/2/2010  | FILD | LINDA | Memorandum Decision and Order re: Plaintiff's Motion to Dismiss and Defendant's Motion to Amend Stephen S. Dunn  |
| 11/12/2010 | HRVC | LINDA | Hearing result for Further Proceedings held on 11/12/2010 01:30 PM: Hearing Vacated Stephen S. Dunn  |
| 11/30/2010 | FILD | LINDA | Order on Defendant's Motion for Enlargement of Time Stephen S. Dunn  |
| 12/1/2010  | FILD | LINDA | Motion for Enlargement of Time and Notice of hearing Stephen S. Dunn   |
|            | FILD | LINDA | Motion for Order to Shorten Time and and Notice of Hearing Stephen S. Dunn   |
| 12/2/2010  | AFFD | LINDA | Affidavit of Terry Andersen Stephen S. Dunn  |
|            | AFFD | LINDA | Affidavit of Rosanna Andersen Stephen S. Dunn  |
| 12/3/2010  | AFFD | LINDA | Affidavit of Thomas Henesh Stephen S. Dunn   |
| 12/6/2010  | AFFD | LINDA | Affidavit of Lane V. Erickson Stephen S. Dunn  |
| 12/8/2010  | FILD | LINDA | Withdrawal of Damages Submissions Stephen S. Dunn  |
| 12/9/2010  | FILD | LINDA | Judgment Stephen S. Dunn   |
|            | NOTA | LEONA | NOTICE OF APPEAL Stephen S. Dunn   |
|            |      | LEONA | Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Indian Springs LLC (plaintiff) Receipt number: 0003378 Dated: 12/9/2010 Amount: \$101.00 (Check) For: Indian Springs LLC (plaintiff) Stephen S. Dunn |
|            | CDIS | LINDA | Civil Disposition entered for: Andersen, Rosanna, Defendant; Andersen, Terry, Defendant; Ells, Everett, Defendant; Ells, Marjorie, Defendant; Indian Springs LLC, Plaintiff. Filing date: 12/9/2010 Stephen S. Dunn              |
|            | APSC | LINDA | Appealed To The Supreme Court Stephen S. Dunn  |
| 12/14/2010 | MEOR | LINDA | Minute Entry And Order Filed Stephen S. Dunn   |
| 12/15/2010 | MEOR | LINDA | Minute Entry And Order Filed Stephen S. Dunn   |
| 12/16/2010 | MEOR | LINDA | Minute Entry And Order Filed Stephen S. Dunn   |
| 12/21/2010 | FILD | LINDA | Motion for Order Awarding Attorney's Fees and Costs Stephen S. Dunn  |
|            | FILD | LINDA | Memorandum of Costs Stephen S. Dunn  |
|            | AFFD | LINDA | Affidavit of Attorney Fees Stephen S. Dunn   |
| 1/12/2011  | FILD | LINDA | Memorandum Decision on Plaintiff's Motion for Attorney Fees and Costs Stephen S. Dunn  |